

Handbook AS-707

Procurement Handbook

June 1988

READER
FICHE

best copy available

P 1.31/10:



The *Procurement Handbook* (PH) is issued and maintained by the Assistant Postmaster General, Procurement and Supply Department, for guidance to all procurement professionals throughout the U.S. Postal Service for procuring supplies, services, and equipment.

The eight appendices and two supplements currently a part of the handbook prescribe standardized procedures that should be used by all procurement personnel when contracting for cleaning services, vehicle leasing, vehicle washing, vehicle polishing, food services, coin-operated photocopiers, contract postal units, motor vehicle maintenance, information systems (including telephone systems), and elevator repair and maintenance.

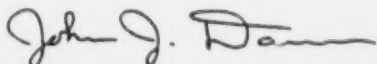
The procedures are not all-encompassing. The PH is not a procurement primer, nor is it intended to be exhaustive. The PH is not to be used as a substitute for a comprehensive knowledge of the Postal Service's procurement policy. Nor is the guidance found within it a replacement for procurement know-how gained through formal training and practical experience.

The extensive, detailed guidance provided in the PH is intended to lend the necessary degree of standardization to procurement practices throughout the Postal Service—not to stifle creative thinking or the exercise of judgment. Many elements of the PH are in fact guidelines meant to expand the user's understanding of and approaches to the procurement task.

All procurement offices throughout the Postal Service are expected to maintain a complete library of current publications. A checklist of recommended publications is provided in Exhibit 2 for PH 2.1.2-I. Of course, the selection and use of publications from this list will depend on the size of the procurement office and the type of buys for which it is responsible. The availability of many of these publications in a procurement office is essential to the effective implementation of the policies and procedures in the *Procurement Manual* and *Procurement Handbook*. The recommended publications contain detailed information to facilitate market and commodity research, cost and price analysis, negotiation, source selection, and contract administration.

Procurement policy for the U.S. Postal Service is contained in Publication 41, the *United States Postal Service Procurement Manual*. Although not subject to the Administrative Procedures Act, the USPS as a matter of policy publishes a summary of changes to Publication 41 in the Federal Register.

Maintenance of the PH has been delegated by the APMG Procurement and Supply to the Director, Office of Plans, Programs and Systems, Procurement and Supply Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, Washington, D.C. 20260-6201. Additions to, deletions from, and changes to the PH are handled in accordance with procedures established by the Director. Since the PH provides internal guidance (sometimes called "housekeeping rules") not having the "force and effect of law," notice will not be published in the Federal Register.


John J. Davin

USPS Procurement Handbook

CONTENTS

Chapter 1 *Authority, Responsibility, and Policy*

1.1	Authority and Responsibility	
1.1.2	Responsibility for Procurement Policy	1.1-1
1.2	PM Publication	
1.2.1	Issuance	1.2-1
1.3	PM Changes	
1.3.1	Proposed Changes	1.3-1
1.4	PM Deviations	
1.4.1	General	1.4-1
1.4.2	Approval of Deviations	1.4-1
1.5	Procurement Authority	
1.5.1	Authority and Delegation	1.5-1
1.5.2	Contracting Officers	1.5-1
1.7	General Policies	
1.7.7	Standards of Conduct	1.7-1
1.7.8	Gratuities	1.7-1

Chapter 2 **Procurement Planning**

2.1	Policy and Procedures	
2.1.1	General	2.1-1
2.1.2	Market Research	2.1-2
2.1.3	Advance Planning	2.1-6
2.1.4	Individual Plans	2.1-6
2.1.5	Implementation Plans	2.1-7
2.1.6	Source Selection Plans	2.1-7
2.2	Planning Considerations	
2.2.1	Quality Requirements	2.2-1
2.2.2	First Article Approval	2.2-2
2.2.3	Acceptance	2.2-2
2.2.4	Warranties	2.2-3
2.2.5	Delivery or Performance Schedule	2.2-6
2.2.6	Liquidated Damages	2.2-8
2.2.8	Options	2.2-9
2.3	Specifications	
2.3.1	General	2.3-1
2.3.3	Product Descriptions	2.3-2

Chapter 3 **Sources**

3.1	Supplies and Services	
3.1.3	National and Regional Contracts and Ordering Agreements	3.1-1
3.1.5	Other Government Sources	3.1-4
3.1.6	Commercial Sources	3.1-5
3.2	Publicizing Purchase Actions	
3.2.2	Methods of Publicizing	3.2.1

3.3	Contractor Qualifications	
3.3.1	Responsible Prospective Contractors	3.3-1

Chapter 4

Purchasing Methods

4.1	Competitive Purchasing	
4.1.2	Solicitations	4.1-1
4.1.3	Receipt of Proposals	4.1-7
4.1.4	Evaluation of Proposals	4.1-8
4.1.5	Contractor Selection and Award	4.1-12
4.1.6	Mistakes in Proposals	4.1-20
4.2	Simplified Purchasing	
4.2.1	General	4.2-1
4.2.2	Solicitations	4.2-2
4.2.3	Receipt and Evaluation of Proposals and Quotations	4.2-4
4.2.4	Ordering Methods	4.2-7
4.2.5	Basic Pricing Agreements	4.2-8
4.2.6	Unpriced Purchase Orders	4.2-11
4.3	Noncompetitive Purchasing	4.3-1
4.4	Price Negotiation	
4.4.1	Prenegotiation Objectives	4.4-1
4.4.2	Negotiation	4.4-2
4.4.3	Memorandum of Negotiation	4.4-3
4.5	Protests	4.5.1

Chapter 5 **Contract Pricing**

5.1	Types of Contracts	
5.1.2	Selection of Contract Type	5.1-1
5.1.7	Letter Contracts	5.1-4
5.1.8	Ordering Agreements	5.1-4
5.1.9	Task Order Contracts	5.1-6
5.2	Cost Principles	
5.2.1	General	5.2-1
5.2.4	Advance Agreements	5.2-1
5.3	Price Evaluation	
5.3.3	Proposal Analysis	5.3-1

Chapter 6 **Contract Administration**

6.1	General	
6.1.1	Responsibilities	6.1-1
6.1.2	Contract Administration Functions	6.1-2
6.2	Contract Performance	
6.2.1	Postaward Orientation	6.2-1
6.2.2	Record Keeping	6.2-2
6.2.3	Contract Monitoring	6.2-5
6.2.5	Right to Adequate Assurance of Performance	6.2-7
6.2.6	Anticipatory Repudiation	6.2-8
6.3	Quality Assurance	6.3-1
6.4	Payments and Financing	
6.4.3	Payment	6.4-1
6.4.5	Progress Payments	6.4-2

6.4.7	Assignment of Claims	6.4-3
6.5	Contract Modifications	
6.5.1	General	6.5-1
6.5.2	Change Orders	6.5-4
6.5.3	Equitable Adjustments for Delays	6.5-5
6.5.4	Novation and Change-of-Name Agreements	6.5-7
6.6	Postal Service Property	6.6-1
6.7	Subcontracting Policies and Procedures	6.7-1
6.8	Claims and Disputes	
6.8.3	Decision and Appeal	6.8-1
6.9	Contract Termination	
6.9.1	General	6.9-1
6.9.2	Termination for Convenience	6.9-1
6.9.3	Termination for Default	6.9-16
6.10	Remedies and Damages	
6.10.1	Remedies	6.10-1
6.10.2	Damages	6.10-2

Chapter 7

Bonds, Insurance, and Taxes

7.1	Bonds	
7.1.3	Performance Bonds	7.1-2
7.1.4	Payment Bonds	7.1-3
7.1.5	Patent Infringement Bonds	7.1-5
7.1.6	Fidelity Bonds	7.1-5
7.1.8	Execution of Bonds	7.1-6
7.1.9	Sureties	7.1-6
7.1.10	Contract Administration	7.1-8

7.2 Insurance

7.2.1	General	7.2-1
7.2.2	Types of Insurance	7.2-1
7.2.3	Self-Insurance	7.2-2
7.2.4	Errors and Omissions Insurance	7.2-2

7.3 Taxes

7.3.3	State and Local Taxes	7.3-1
-------	-----------------------------	-------

Chapter 8

Special Categories of Contracts

8.2	Professional and Consultant Services	8.2-1
-----	--	-------

8.3 Information Systems

8.3.2	Policy	8.3-1
-------	--------------	-------

8.4 Research and Development

8.4.4	Contracting Procedures	8.4-1
-------	------------------------------	-------

8.6 Structured Contracts and Controlled Contracts

8.6.2	Policies and Procedures	8.6-1
-------	-------------------------------	-------

Chapter 9

Patents and Data Rights

9.2	Patents and Data Rights	[RESERVED]
9.2.1	Acquisition of Patent Rights	[RESERVED]
9.3.2	Data Rights Acquisition Policy	[RESERVED]
9.3.6	Acquisition of Rights in Computer Software	[RESERVED]

Chapter 10

Socioeconomic Policies

10.1 Small and Minority-Owned Businesses

10.1.1	General	10.1-1
10.1.4	Contracting with Minority-Owned Businesses	10.1-2
10.1.5	Subcontracting with Small and Minority-Owned Businesses	10.1-2

10.2 Labor Policies

10.2.3	Contract Work Hours and Safety Standards Act	10.2-1
10.2.5	Walsh-Healey Public Contracts Act	10.2-1
10.2.6	Fair Labor Standards Act of 1938	10.2-2
10.2.7	Equal Employment Opportunity	10.2-2
10.2.10	Service Contract Act	10.2-3
10.2.11	Employment of the Handicapped	10.2-6
10.2.12	Veterans	10.2-6

10.3 Buy American Policy

10.3.2	Supplies	10.3-1
--------	----------------	--------

10.4 Clean Air and Clean Water Act

10.4.2	Requirements	10.4-1
--------	--------------------	--------

Appendices

- Appendix A Field Guide for Motor Vehicle Maintenance Service Contracting [RESERVED]**
- Appendix B Field Guide for Motor Vehicle Hire Service Contracting [RESERVED]**
- Appendix C Field Guide for Elevator Repair and Maintenance Service Contracting [RESERVED]**
- Appendix D Field Guide for Cleaning Service Contracting**
- Appendix E Field Guide for Coin Operated Copier Service Contracting [RESERVED]**
- Appendix F Field Guide for Contract Postal Unit (CPU) Service Contracting [RESERVED]**

Chapter 1

Authority, Responsibility, and Policy

1.1	Authority and Responsibility	
1.1.2	Responsibility for Procurement Policy	
	Organization and Operation of the Procurement Policy Committee (PPC) (1.1.2.d)	1.1-1
	Exhibit: Procurement Policy Committee Charter and Subcommittee Charters	1.1-3
1.2	PM Publication	
1.2.1	Issuance	
	Control and Production of the PM	1.2-1
1.3	PM Changes	
1.3.1	Proposed Changes	
	I. Submission of Proposed Changes	1.3-1
	Format: Proposed PM Change	1.3-3
	II. Disposition of Proposed Changes	1.3-1
1.4	PM Deviations	
1.4.1	General	
	Repeated Deviations (1.4.1.d)	1.4-1
1.4.2	Approval of Deviations	
	Delegation of Authority	1.4-1
1.5	Procurement Authority	
1.5.1	Authority and Delegation	
	Delegations of Authority by the APMG, Procurement and Supply	1.5-1
	Exhibit 1: Authorities and Responsibilities Under the PM—	
	Procurement and Supply Department	1.5-10
	Exhibit 2: APMG Delegations of Procurement Authority	1.5-16

1.5.2	Contracting Officers	
	I. Contracting Officer Authorities and Responsibilities Under the PM	1.5-1
	II. Proposed Contractual Actions Exceeding a Contracting Officer's Procurement Authority (1.5.2.a)	1.5-2
	III. Contracting Officer Actions Requiring Coordination (1.5.2.b)	1.5-2
	Exhibit: Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation	1.5-17
	IV. Actions Requiring Approval, Concurrence, or Advice from Assigned Counsel (1.5.2.b) ...	1.5-2
	Exhibit: Authorities and Responsibilities Under the PM or Referenced in the PM— Law Department	1.5-28
	V. Authority to Appoint Contracting Officers (1.5.2.c)	1.5-3
	VI. Criteria for Contracting Officer Selection (1.5.2.c.1)	1.5-4
	VII. Equivalencies, Waivers, and Interim Appointments (1.5.2.c.1)	1.5-5
	VIII. Process for Selecting Contracting Officers	1.5-6
	IX. Certificates of Appointment (1.5.2.c.2)	1.5-7
	X. Evaluating Contracting Officers and Terminating Appointments (1.5.2.c.4)	1.5-8
1.7	General Policies	
1.7.7	Standards of Conduct	
	Ensuring Compliance with PM Requirement	1.7-1
1.7.8	Gratuities	
	Inspection Service Authorities and Responsibilities (1.7.8.c)	1.7-1
	Exhibit: Authorities and Responsibilities Under the PM—Inspection Service	1.7-2

1.1 Authority and Responsibility

1.1.2 Responsibility for Procurement Policy

Organization and Operation of the Procurement Policy Committee (PPC) (1.1.2.d)

Mission and Charter

The Procurement Policy Committee determines the direction the Postal Service will take in procuring supplies, services, equipment, construction (including minor repairs and alterations), real estate (buying as well as leasing), and mail transportation. It is charged with evaluating the Postal Service's procurement policy from a global perspective. The PPC ensures that procurement policy adapts to economic trends and trends in Federal procurement, in a manner that reflects the business objectives and meets the operational needs of the Postal Service. In doing so the PPC initiates policy changes and approves proposed policy changes as it sees fit.

The exhibit for this procedure, "Procurement Policy Committee Charter and Subcommittee Charters," presents the PPC charter and the charters for two permanent subcommittees established by the PPC: the Patent Subcommittee and the Intellectual Property, Data, and Software Rights (IPDSR) Subcommittee.

Meetings

PPC meetings are held on the first Tuesday in June and December of each year.

Role of the Executive Secretary

The General Manager, Procurement Policies and Programs Division (PP&PD), will serve as the Executive Secretary to the PPC.

The Executive Secretary has the following responsibilities:

1. Preparing the agendas for PPC meetings;
2. Preparing minutes of PPC meetings;
3. Working with the permanent members to identify individuals (both Postal Service officials and outside experts) whose participation in or input to PPC meetings will assist the PPC in fulfilling its mission, and making arrangements with those individuals;
4. Preparing an annual report to the PPC on Postal Service procurement activity, as described below;
5. Submitting proposed PM changes to the PPC for disposition instructions (see PH 1.3.1-II); and
6. Obtaining PPC concurrence before issuing PM Transmittal Letters (TLs) (see PH 1.2.1).

Reports

1. *Annual Report on Postal Procurement Activity.* The Executive Secretary is responsible for preparing, for presentation at each December meeting of the PPC, a report summarizing the past fiscal year's procurement activity. The report must be sufficiently detailed to permit each member to evaluate the Postal Service's overall procurement activity and that of his or her own Department, discerning trends in relation to activity during the previous fiscal year. At the discretion of the PPC, an annual report on Postal Service procurement activity, including policy changes approved by the PPC, will be prepared for wider distribution.
2. *Subcommittee Reports.* The chairperson of each PPC subcommittee must prepare, for presentation at the December PPC meeting, an annual report on activity within the subcommittee's area of responsibility.

Exhibit for PH 1.1.2, Organization and Operation of the Procurement Policy Committee (PPC)
Procurement Policy Committee Charter and Subcommittee Charters

**PROCUREMENT POLICY COMMITTEE CHARTER AND
SUBCOMMITTEE CHARTERS**

UNITED STATES POSTAL SERVICE

Procurement Policy Committee Charter

I. Purpose

This charter sets forth the scope and operations of the Procurement Policy Committee (PPC).

II. Voting Members

Voting members consist of the Chairman of the PPC (the APMG, Procurement and Supply); the APMG, Facilities; the APMG, Mail Processing; and the Deputy General Counsel. Each voting member will have one vote. A quorum will consist of three-quarters of the voting members. Any matter properly brought before the PPC for decision will be determined by the affirmative vote of the majority of the quorum. In the event that the vote on any matter is equally divided, the Chairman will refer the matter to the SAPMG, Facilities and Supply, for a decision.

Nonvoting Assistants

Each voting member may appoint assistants to accomplish any PPC duty except exercise of voting powers. An assistant may be delegated the authority to deliver a member's written vote to the PPC.

III. Meetings

In addition to the semiannual meetings prescribed by PM 1.1.2.d.3, meetings may be called by the Chairman upon 10 days' written notice to the other members. Meetings may be held with less than 10 days' notice if all voting members approve.

Exhibit for PH 1.1.2, Organization and Operation of the Procurement Policy Committee (PPC)
Procurement Policy Committee Charter and Subcommittee Charters (continued)

IV. Duties

Chairman

- (1) Represents the PPC in performing liaison with other governmental agencies, industry, the media, and the public.
- (2) Presides at PPC meetings and determines the agenda for such meetings.
- (3) Coordinates and manages PPC efforts, assigning tasks to individual members as required.

Executive Secretary (appointed by the Chairman)

- (1) The Executive Secretary maintains a case management system for disposition of matters brought before the PPC.
- (2) Records PPC disposition of cases and documents the official case file.
- (3) Supervises the operations of PPC staff.

Voting Members

- (1) Present the views of their jurisdictions on matters pending decision by the PPC.
- (2) Render written and oral reports concerning cases, as may be required by the Chairman.

Exhibit for PH 1.1.2, Organization and Operation of the Procurement Policy Committee (PPC)
Procurement Policy Committee Charter and Subcommittee Charters (continued)

V. Case Submission and Screening

Cases sent to the Chairman under the authority of PM 1.3.1 will be assigned to the Executive Secretary for screening to ensure proper format and completeness. The Executive Secretary will assign a case number and title, make an initial recommendation for handling, recommend a priority, and provide the case to the PPC for discussion at arranged meeting times. If the Executive Secretary determines that direct assignment to a subcouncil is appropriate, the Executive Secretary will assign the case to the subcouncil for review and reporting back to the Secretary within 30 days.

The Executive Secretary is responsible for establishing the detailed agenda for the PPC, in accordance with overall guidance and direction from the Chairman. Voting members of the PPC may request the Executive Secretary to place certain cases on the agenda or to delay cases. Cases will be scheduled when the PPC needs to act on the case and discussions are required. These cases include new cases scheduled for review of an originator's recommendation and approval of initial action; cases for which voting members request discussion, particularly those that have broad policy implications; and cases for which review of a subcouncil determination is requested.

The Executive Secretary will place a case on the agenda and distribute the agenda with the written notice of the meeting. The member will then decide if discussions are necessary or if the case can simply be approved. If no member requests discussions through the Executive Secretary, the case will be considered approved by acclamation.

VI. Case Discussion

The Chairman will call cases for discussion in the order scheduled, and will poll members to determine the type and length of discussion required for each case. Cases requiring only editorial or minor discussions will be disposed of at the beginning of the agenda. The Chairman will determine the length of time available for discussion of each case. When lengthy redrafting is determined necessary by majority vote, the PPC may refer the case back to

Exhibit for PH 1.1.2, Organization and Operation of the Procurement Policy Committee (PPC)
Procurement Policy Committee Charter and Subcommittee Charters (continued)

the originator for further work, or in the alternative, refer the matter to a subcouncil.

VII. Voting

Upon completion of discussion, unless the matter is referred back to the originator or deferred to another meeting, the Chairman will call for a vote on the matter presented. The vote will be recorded by the Executive Secretary and transmitted to the General Manager, PP&PD, P&SD, for further action (e.g., publication or return to the person who submitted the proposal).

VIII. Subcommittees

The PPC may, from time to time, establish one or more subcommittees to review and consider cases in specialized or technically complex procurement areas.

Exhibit for PH 1.1.2, Organization and Operation of the Procurement Policy Committee (PPC)
Procurement Policy Committee Charter and Subcommittee Charters (continued)

UNITED STATES POSTAL SERVICE
PPC Patent Subcommittee Charter

I. Purpose

This charter establishes the Patent Subcommittee of the Procurement Policy Committee (PPC).

II. Voting Members

The subcommittee will be composed of a representative of patent counsel, a representative from PP&PD selected by the General Manager, and a representative from the Operations Support Group selected by that Group's SAPMG. Each voting member will have one vote. Any matter properly brought before the Subcommittee for decision will be determined by the affirmative vote of the majority.

Nonvoting Assistants

Each voting member may appoint assistants to accomplish any Patent Subcommittee duty except exercise of voting powers. An assistant may be delegated the authority to deliver a member's written vote to the Subcommittee.

III. Duties

The Patent Subcommittee will perform duties assigned to it by the PPC. In addition, the Patent Subcommittee is granted the authority to consider any alternate proposal giving a contractor greater rights in an invention made in the course of a contract.

IV. Consideration of Alternate Proposals

The contracting officer will submit each alternate proposal and a recommendation as to its disposition. Approval will be automatic if the Subcommittee does not reject or modify the proposal within 15 days of receipt.

Exhibit for PH 1.1.2, Organization and Operation of the Procurement Policy Committee (PPC)
Procurement Policy Committee Charter and Subcommittee Charters (continued)

If rejected, the contracting officer may, within 5 days of the rejection, request full PPC review. Unless the PPC modifies or disapproves the Subcommittee's decision within 20 days of receipt, the Subcommittee's decision will be final. The PPC's decision may not be appealed.

Exhibit for PH 1.1.2, Organization and Operation of the Procurement Policy Committee (PPC)
Procurement Policy Committee Charter and Subcommittee Charters (continued)

UNITED STATES POSTAL SERVICE
PPC Intellectual Property, Data, and Software Rights
(IPDSR) Subcommittee Charter

I. Purpose

This charter establishes the Intellectual Property, Data, and Software Rights (IPDSR) Subcommittee of the Procurement Policy Committee (PPC).

II. Voting Members

The subcommittee will be composed of a representative from counsel, a representative from PP&PD selected by the General Manager, and a representative from the Management Information and Research Technology Group selected by that Group's SAPMG. Each voting member will have one vote. Any matter properly brought before the Subcommittee for decision will be determined by the affirmative vote of the majority.

Nonvoting Assistants

Each voting member may appoint assistants to accomplish any IPDSR Subcommittee duty except exercise of voting powers. An assistant may be delegated the authority to deliver a member's written vote to the Subcommittee.

III. Duties

The IPDSR Subcommittee will perform duties assigned to it by the PPC. In addition, the IPDSR Subcommittee is granted the authority to consider any alternate proposal related to intellectual property, data right, or software, whether submitted in the course of a contract or independently.

IV. Consideration of Alternate Proposals

The contracting officer will submit each alternate proposal and a recommendation as to its disposition. Approval will be automatic if the

Exhibit for PH 1.1.2, Organization and Operation of the Procurement Policy Committee (PPC)
Procurement Policy Committee Charter and Subcommittee Charters (continued)

Subcommittee does not reject or modify the proposal within 15 days of receipt. If rejected, the contracting officer may, within 5 days of the rejection, request full PPC review. Unless the PPC modifies or disapproves the Subcommittee's decision within 20 days of receipt, the Subcommittee's decision will be final. The PPC's decision may not be appealed.

1.2 PM Publication

1.2.1 Issuance

Control and Production of the PM

Overall Responsibility

Under the direction of the APMG, Procurement and Supply, the Procurement Policies and Programs Division (PP&PD) is responsible for control of the PM. PP&PD must see that the PM is kept current in both hard copy and electronic copy.

Maintenance

1. *Hard copy.* PP&PD maintains the PM in hard copy. Hard copy production is by typesetting and printing.
2. *Electronic copy.* The St. Louis PDC maintains the electronic copy of the PM on its computer. In addition, the Accelerated Procurement Documentation System (APDS) contains the complete text of the PM, with a word search capability.

Issuance of Transmittal Letters

1. *Timing.* Transmittal Letters (TLs) containing approved changes to the PM will be issued, in both hard copy and electronic copy, during January and July of each year. At each December and June meeting of the PPC, the Executive Secretary will officially present all TL changes and obtain PPC concurrence.
2. *Issue Date.* Each TL, and any replacement page issued in hard copy with a TL, must bear a TL issue date. The TL issue date is the date on which the hard copy manuscript is approved for printing and the electronic copy is transmitted to the St. Louis PDC. It is also the date on which all changes contained in the TL become effective.
3. *Dissemination.* Upon receipt of a TL by electronic transfer, the St. Louis PDC must issue to each user, overnight, an updated version of the PM. This electronic update must include the full text of the TL, identifying all changes effected. Each TL will be disseminated in hard copy within four weeks of the TL issue date.
4. *Production Schedule.* The schedule for TL production is as follows:
 - a. Draft manuscript released for clearance: six weeks before issue date.
 - b. Draft manuscript cleared (all comments addressed and editing accomplished): two weeks before issue date.
 - c. Manuscript entered/on-line text revised: one week before issue date.
 - d. In-house review, proofing, and correction completed: one day before issue date.

Other Changes

When necessary, PM changes may be issued between TLs through publication in the *Postal Bulletin*. These interim changes are discouraged, however. As TL issuance is what triggers the official updating of the electronic version of the PM, any change not made by TL will increase the likelihood that users are not working with a current version of the PM.

1.3 PM Changes

1.3.1 Proposed Changes

I. Submission of Proposed Changes

As stated in the PM, anyone can submit a proposed change to the PM. That includes Postal Service suppliers and members of the public.

Follow the format for this procedure, "Proposed PM Changes," in drafting the proposed change. Be sure to supply the exact change in wording you propose. The information called for in format items 1, 2, and 7 must be provided in all cases; information called for by items 3 through 6 must be provided if pertinent to the change being proposed. In addition, you may supply supporting documentation (such as memoranda, working papers, charts, informal surveys, historical data, or projections) that might be beneficial in deciding whether to approve the proposed change.

Submit the proposed change and any supporting documentation to:

General Manager
Procurement Policies and Programs Division
Procurement and Supply Department
475 L'Enfant Plaza, S.W., Room 4131
Washington, D.C. 20260-6201

II. Disposition of Proposed Changes

As Executive Secretary to the Procurement Policy Committee (PPC), the General Manager, Procurement Policies and Programs Division (PP&PD), is responsible for seeing that the following steps are taken for each proposed change received by PP&PD:

1. *Review.* All proposed changes will be reviewed for compliance with the requirements of PM 1.3.1 and PH 1.3.1-I. Any proposed change that does not contain the necessary background information will be returned.
2. *Assignment of a case number.* The case number will consist of the last two digits of the fiscal year, followed by a dash; the arabic number of the PM chapter affected by the change (if more than one is affected, the number of the primary chapter), followed by a dash; and a sequentially assigned number, beginning with "1" each year.
3. *Analysis.* All research necessary to develop a recommendation to the PPC will be conducted, including any required analysis by Postal Service officials and outside procurement experts.
4. *Disposition of changes involving minor errors.* Proposed changes that merely point out obvious PM errors (grammatical mistakes, wrong cross-references, typographical errors, and the like) will not be forwarded to the PPC members, but addressed by PP&PD. PP&PD will furnish a list of such changes, for informational purposes, at each formal PPC meeting.

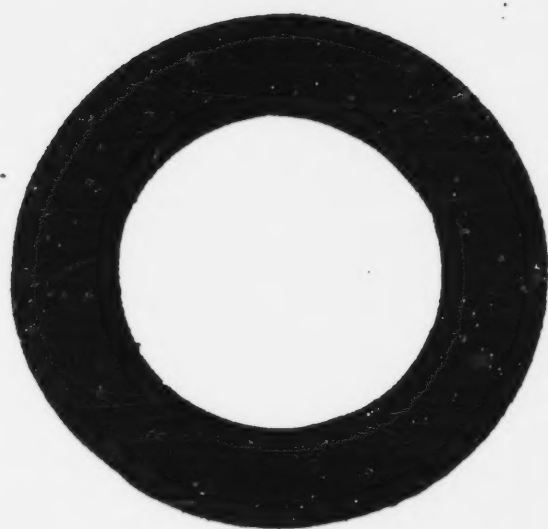
5. *Preparation of a change proposal jacket.* A jacket must be prepared for each proposed change to be circulated to the PPC members. Each jacket will contain:
 - a. A summary of the change and its effect;
 - b. An analysis of the change, identifying the analysts and stating their opinions and recommendations;
 - c. PP&PD's recommended disposition, and the rationale for it;
 - d. The known impact of the change, including any cost impact;
 - e. Recommended new PM language (if the change is recommended); and
 - f. Recommended implementation date (if the change is recommended).
6. *Circulation to PPC members.* Proposed changes will be handled in one of two ways, depending on their relative importance:
 - a. Major proposed changes (those which would represent a major departure from current ways of doing business, have a large dollar impact, carry potential political consequences, and so on) must be presented to PPC members as part of the official agenda at formal semiannual PPC meetings. Each member will be furnished a complete change proposal jacket at least five days before the scheduled meeting.
 - b. Proposed changes that are substantive but not major may be circulated among PPC members between meetings for their consideration and decision. If the members do not agree unanimously on the disposition of the change, further action will be deferred until the next formal PPC meeting.
7. *Listing in PPC minutes.* The minutes of each formal PPC meeting will list—
 - a. All major changes acted upon during the meeting, and their disposition; and
 - b. All other changes acted upon since the last meeting, and their disposition.
8. *Inclusion in a summary listing.* PP&PD will maintain, for each fiscal year, a list of all proposed changes it has received. The list will contain, for each proposed change—
 - a. Case number;
 - b. Brief description;
 - c. Originator of the proposal;
 - d. Date received by PP&PD;
 - e. Final disposition;
 - f. Date of final disposition; and
 - g. Any other data deemed pertinent.
9. *Notice of disposition.* A letter will be sent to all parties submitting a proposed change, informing them of the action taken.

Format for PH 1.3.1-I, Submission of Proposed Changes
Proposed PM Changes

PROPOSED PM CHANGES

1. PM provision or provisions for which the proposed change is sought:
Chapter # _____, Section # _____, Part # _____, etc.
Title _____
2. State your proposed change (new wording):
3. Explain why the change is necessary or desirable:
4. Discuss the effect of the change on the Postal Service in terms of cost and personnel resources:
5. List other documents, if any, that will be affected by the proposed change:
6. If applicable, reference related procedures or experiences of other (Postal or non-Postal) agencies or organizations:
7. Submitted by: _____
Date submitted: _____

- Case No. Assigned: _____



1.4 PM Deviations

1.4.1 General

Repeated Deviations (1.4.1.d)

After a one-time deviation from any specific PM requirement has been granted three times, the General Manager, Procurement Policies and Programs Division (PP&PD), will treat the deviation as a proposed PM change. The deviation will be assigned a case number, analyzed, and submitted to the PPC for disposition, as set forth in PH 1.3.1-II.

1.4.2 Approval of Deviations

Delegation of Authority

As stated in PH 1.5.1, the authority of the APMG, Procurement and Supply, to permit one-time deviations from PM requirements is delegated to—

1. The Directors, Procurement and Materiel Management Service Centers;
2. The Director, Office of Procurement; and
3. The General Manager, PP&PD.

Copies of all approvals of one-time deviations, and of all related correspondence, must be furnished to the General Manager, PP&PD, for record-keeping purposes.



1.5 Procurement Authority

1.5.1 Authority and Delegation

Delegations of Authority by the APMG, Procurement and Supply

PM 1.5.1 permits the APMG, Procurement and Supply, to delegate his or her procurement authority with or without limitation and with or without the right to redelegate (see also 1.6.2.a).

Exhibit 1 for this procedure, "Authorities and Responsibilities Under the PM—Procurement and Supply Department," notes all instances in which the PM authorizes or directs actions by entities within the Department. The first section of the exhibit lists all APMG authorities and responsibilities.

Exhibit 2 for this procedure, "APMG Delegations of Procurement Authority," shows which of the APMG authorities and responsibilities listed in Exhibit 1 are delegated to subordinate positions, and states any limitations on the delegations. All delegations are made to *positions*, not to the individuals currently filling those positions. (Contracting officer authority, on the other hand, is issued to *named individuals* rather than positions; see PH 1.5.2-I and 1.5.2-VI through X.)

(Note: The last two types of delegations shown in Exhibit 2 (approval of unauthorized contractual commitments and approval of requests for noncompetitive procurement actions) have no direct reference within the PM and therefore do not appear in Exhibit 1.)

1.5.2 Contracting Officers

I. Contracting Officer Authorities and Responsibilities Under the PM

Authority to Enter Into Contracts

The Postal Service operates under the principle of delegated authority in all its procurement actions. Consequently, those who hold contracting officer certificates of appointment are the only individuals, other than the APMG, Procurement and Supply, who can legally enter into an agreement that binds the Postal Service contractually. Any such action by an individual who holds no contracting officer certificate is an unauthorized contractual commitment, as addressed in PH 4.3-III.

Delegation of Contracting Officer Functions

As stated in the definition of *contracting officer* at PM 1.6.2.f, certain contracting officer authorities and responsibilities may be performed by other individuals acting on behalf of the contracting officer. Individuals who act in that capacity in administration of a Postal Service contract are referred to as *contracting officer's representatives* (see PH 6.1.1).

Contracting officers must remember that, notwithstanding their authority to make these delegations, they bear the ultimate responsibility for all contract award and contract administration activities, and for any related events that occur after a contract's conclusion.

II. Proposed Contractual Actions Exceeding a Contracting Officer's Procurement Authority (1.5.2.a)

It is Postal Service policy that the contracting officer assigned responsibility for a procurement action is the contracting officer who signs the contract, even though the amount of the action exceeds the limitation of procurement authority specified in that individual's contracting officer certificate of appointment. In such a case, an individual with the requisite procurement authority must grant it to the designated contracting officer at the time of contract award. If the director or manager in charge of the office taking the procurement action does not have the requisite dollar authority, the authority must be delegated by the office to which the procuring office reports functionally. The higher-level office may elect to review the solicitation package before granting the additional procurement authority.

The contracting officer who must seek delegation of a higher dollar authority is responsible for obtaining all reviews and concurrences otherwise necessary, before requesting the delegation.

III. Contracting Officer Actions Requiring Coordination (1.5.2.b)

The PM recognizes many instances in which contracting officers should be guided by the expertise of other individuals. The exhibit for this procedure, "Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation," shows, by PM chapter, each contracting officer action for which the PM requires coordination with assigned counsel, a higher-level procurement official, or another authority.

IV. Actions Requiring Approval, Concurrence, or Advice from Assigned Counsel (1.5.2.b)

Because a contract is defined as an agreement that can be legally enforced (PM 1.6.2.d), Law Department personnel play an important role in Postal Service procurement actions. They determine the legal sufficiency of contractual language, represent procurement personnel in unusual and unique contractual problems, and assist in resolving other procurement matters.

Actions Addressed by the PM

The Law Department has certain authorities and responsibilities under the PM. These are summarized in the exhibit for this procedure, "Authorities and Responsibilities Under the PM—Law Department." To determine whether the PM requires approval, concurrence, or advice from assigned counsel before taking a specific action, contracting officers can also refer to the exhibit for PH 1.5.2-III, "Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation."

Other Actions Requiring Counsel's Concurrence

Beyond those actions addressed by the PM and summarized in the exhibits cited above, the following procurement actions require *concurrence* by assigned counsel.

*Office of Procurement, Procurement and Materiel Management Service Centers,
Procurement Policies and Programs Division, and WASC/EASC Contract Branches*

1. Issuance of any solicitation anticipated to result in a contract award (initial award or initial award plus option quantities) exceeding \$500,000.
2. Issuance of any solicitation anticipated to result in a contract award (initial award or initial award plus option quantities) exceeding \$50,000, when—
 - Any provision or clause required by either the PM or the Accelerated Procurement Documentation System (APDS) has been modified or deleted; or
 - A provision or clause not contained in either the PM or APDS has been added.
3. Any action that raises questions of an unusual or compelling legal nature.

Procurement and Materiel Management Service Offices and Special Divisions

1. Issuance of any solicitation anticipated to result in a contract award (initial award or initial award plus option quantities) exceeding \$100,000.
2. Issuance of any solicitation anticipated to result in a contract award (initial award or initial award plus option quantities) exceeding \$50,000, when—
 - Any provision or clause required by either the PM or the Accelerated Procurement Documentation System (APDS) has been modified or deleted; or
 - A provision or clause not contained in either the PM or APDS has been added.
3. Any action that raises questions of an unusual or compelling legal nature.

Typical Divisions

1. Issuance of any solicitation anticipated to result in a contract award (initial award or initial award plus option quantities) exceeding \$50,000.
2. Issuance of any solicitation anticipated to result in a contract award (initial award or initial award plus option quantities) not exceeding \$50,000, when—
 - Any provision or clause required by either the PM or the Accelerated Procurement Documentation System (APDS) has been modified or deleted; or
 - A provision or clause not contained in either the PM or APDS has been added.
3. Any action that raises questions of an unusual or compelling legal nature.

V. Authority to Appoint Contracting Officers (1.5.2.c)

Exhibit 2 for PH 1.5.1 shows the Procurement and Supply Department officials who are authorized, by delegation of authority from the APMG, to issue contracting officer certificates of appointment. The APMG may, at his or her discretion, authorize other appointing officials.

The APMG is responsible for reviewing all contracting officer appointments, and may suspend or revoke appointments that do not comply with the requirements stated in PH 1.5.2-VI through 1.5.2-XIII, below.

VI. Criteria for Contracting Officer Selection (1.5.2.c.1)

The following minimum criteria apply to the selection and appointment of, and delegation of authority to, all contracting officers other than those authorized to issue contracting officer certificates of appointment.

Contracting Officer (Level I)

The following qualifications are required for contracting officers who are delegated obligation authority up to the threshold for simplified purchasing tasks purchases on the open market and up to the maximum limit for orders against Federal Supply Schedules and other indefinite-delivery contracts or agreements.

1. *Experience.* At least one year of experience in performing substantive informal purchasing tasks.
2. *Education.* A high school diploma or equivalent.
3. *Training.* Satisfactory completion of the following courses:
 - Introduction to the Procurement Manual/Handbook
 - Principles of Purchasing
 - Simplified Purchasing
 - Structured Contracts
4. *Duties.* Performance of informal purchasing tasks for at least 25 percent of current working hours.

Contracting Officer (Level II)

The following qualifications are required for contracting officers who are delegated obligation authority up to \$200,000 for open-market purchases and up to the maximum limit for orders against Federal Supply Schedules and other indefinite-delivery contracts or agreements.

1. *Experience.* At least three years of current, progressively complex and responsible experience in performing competitive and noncompetitive (other than simplified) contracting tasks. Ordinarily, this experience must have been in formal contracting positions (or in directly comparable military or private sector positions). The appointing official is accountable for obtaining and presenting evidence that the employee has the required experience.
2. *Education.* Satisfactory completion of at least 24 semester hours of instruction at an accredited college or university in five of the following eight disciplines: (a) accounting, (b) business finance (c) commercial (business) law, (d) economics, (e) quantitative analysis, (f) marketing, (g) contracting or purchasing, and (h) organization and management.
3. *Training.* Satisfactory completion of the following courses:
 - All Level I Courses
 - Contract Formation
 - Contract Administration, Basic
 - Discussion/Negotiation Strategies and Techniques
 - Contract Administration, Advanced

Development of Statements of Work and Technical Evaluation Factors
Mandatory Specialty Course

4. *Duties.* Performance of formal purchasing tasks for at least 51 percent of current working hours.

Contracting Officer (Level III)

The following qualifications are required for contracting officers who are delegated obligation authority in excess of \$200,000 for open-market purchases.

1. *Experience.* At least five years of current, progressively complex and responsible experience in performing competitive and noncompetitive (other than simplified) contracting tasks. Ordinarily, this experience must have been in formal contracting positions (or in directly comparable military or private sector positions). The appointing official is accountable for obtaining and presenting evidence that the employee has the required experience.
2. *Education.* Four years of education at an accredited college or university, which included at least 24 semester hours in five of the following eight disciplines:
(a) accounting, (b) business finance (c) commercial (business) law, (d) economics, (e) quantitative analysis, (f) marketing, (g) contracting or purchasing, and (h) organization and management.
3. *Training.* Satisfactory completion of the following courses:
 - All Level I and Level II Courses
 - Contract Law
 - Advanced Pricing
 - Strategic Buying
 - Mandatory Specialty Courses
4. *Duties.* Formal purchasing tasks (including any related tasks inherent in supervising or managing a procurement organization) for at least 51 percent of the individual's current hours of duty.

VII. Equivalencies, Waivers, and Interim Appointments (1.5.2.c.1)

Required Experience

For employees who have a bachelor's or post-graduate degree from an accredited college or university with a major in purchasing or procurement, education may be substituted for procurement experience at the rate of twelve months of education for three months of experience.

Required Education

Appointing officials may waive the requirement for formal education for individuals who have satisfactorily completed the noncredit equivalent of formal training in (1) accounting, (2) business finance, (3) commercial (business) law, (4) economics, (5) quantitative analysis, (6) marketing, and (7) organization and management. As part of the notice of appointment, appointing officials are responsible and accountable for obtaining and presenting evidence that the employee has satisfactorily completed equivalent noncredit training in these business disciplines.

Required Training

As part of the Career Ladder Programs, employees are required to attend specified courses. If an employee has learned substantially the same skills and knowledge (through college coursework, other training programs, or experience) taught in a mandatory training program, the requirement to attend that program may be waived before appointment by the APMG, Procurement and Supply. Appointing officials are responsible for obtaining and presenting evidence that the employee has learned equivalent skills and knowledge. For this purpose, the APMG may establish equivalency examinations and require employees to pass an examination or examinations as a condition for appointment.

Duties

With advance approval of the APMG, Procurement and Supply, employees may be appointed as contracting officers even though contracting duties are rarely performed. This is especially appropriate for employees in remote locations where contracting authority may need to be exercised on rare occasions for urgent requirements. Appointing officials must forward specific justification, and appropriate special limitations, for granting contracting authority to such individuals as part of the notice of appointment (see PH 1.5.2-VIII).

Interim Appointments

Personnel will not ordinarily be appointed as contracting officers if they do not have the qualifications prescribed in PH 1.5.2-VI. In those circumstances when it is necessary to appoint a contracting officer who has not completed the required training and education, a six-month (maximum) interim certificate may be granted. Failure to successfully complete the training and education requirements during the interim period will result in the loss of the delegated contracting officer authority or (if due to lack of training funds, unavailability of a course quota, or any other situation beyond the control of the individual or supervisory personnel) in the issuance of one additional six-month interim certificate.

All interim appointments must be approved in advance by the APMG, Procurement and Supply. When time is of the essence, approval may be granted orally.

VIII. Process for Selecting Contracting Officers

Area of Consideration

Appointing officials will obtain from procurement activity supervisors and managers the names of employees who meet the minimum criteria for selection and appointment as contracting officers. Appropriate data on the individual's training, experience, and background will also be obtained.

Development of Candidates

Appointing officials will forecast annually the number of contracting officers that will be necessary to support the missions of their organizations and expected turnover among current contracting officers. They will ensure that sufficient personnel are enrolled in career ladder programs and progressing in those programs to fully meet the anticipated need for contracting officers.

Evaluation of Candidates

Appointing officials will base their selections primarily on past performance, in terms of demonstrated potential to competently and ethically make the central contract-related business decisions that will be necessary under the terms and conditions of the appointment.

Notice of Appointment

Thirty days before the effective date of the appointment, the appointing official will forward through channels to the APMG, Procurement and Supply, a formal notice of appointment that includes (1) the name of the individual, (2) a copy of the certificate of appointment, and (3) documents (resumes and training records) supporting the recommendation and verifying that the individual has the required qualifications. A copy of the notice shall also be distributed to the prospective contracting officer and the appropriate Postal Data Center.

If time is of the essence in making an appointment, oral notice of the appointment may be given to the APMG, Procurement and Supply, before the effective date and time of the appointment. Oral notice must be followed by the written notice of appointment within 30 days after the effective date of the appointment.

IX. Certificates of Appointment (1.5.2.c.2)

Issuance

Contracting officers will be appointed in writing on a Certificate of Appointment format, which will state any limitation on the scope of authority to be exercised, other than limitations contained in the PM. The certificate will also specify:

1. The name of the individual being appointed;
2. The effective date of the appointment;
3. The authorized maximum dollar amount that may be obligated by the contracting officer;
4. The authorized organizational unit for which the contracting officer may obligate funds; and
5. Any other limits on the contracting officer's authority to obligate funds, other than those contained in the PM.

Control of Issued Certificates

At the time of termination, the appointing official must reclaim any certificate issued to the employee. Appointing officials are responsible for recovering, updating, and reissuing certificates to incorporate any necessary changes in the terms and conditions of appointment.

The General Manager, Procurement Policies and Programs Division (PP&PD), must maintain a master listing of all contracting officer certificates.

X. Evaluating Contracting Officers and Terminating Appointments (1.5.2.c.3 and 1.5.2.c.4)

Evaluation Factors

The APMG, Procurement and Supply, will annually prescribe factors for evaluating the exercise of contracting authority. These factors may be supplemented as necessary by appointing officials.

Evaluating Contracting Officers

The APMG, Procurement and Supply, will provide for the appraisal of contracting officer decisions as a part of procurement management assistance reviews.

Appointing officials will provide for periodic assessment and rating of the performance of contracting officers, in terms of the evaluation factors prescribed annually by the APMG.

Revoking or Terminating Appointments

A contracting officer's appointment ends when the individual is reassigned or separated, unless the appointment (1) has other provisions for automatic termination or (2) is revoked sooner.

A contracting officer's appointment may be revoked at any time by the appointing official or the APMG, Procurement and Supply. The APMG must approve any revocation by an appointing official. Revocations may not be retroactive. All revocations must be in writing, identifying the contracting officer, the appointing official, and the effective date. A copy of the revocation must be forwarded to the APMG, Procurement and Supply, with an explanation of the reasons and grounds for revocation.

The APMG, Procurement and Supply, may review and investigate the revocation of contracting authority and may reappoint the individual as a contracting officer.

A contracting officer may appeal revocation of authority to the APMG, Procurement and Supply. Such an appeal must be filed in writing within ten days after the contracting officer has received written notice of revocation.

Record Keeping

The appointing official must maintain records on each appointed contracting officer. The records will, at a minimum, include a copy of the certificate of appointment, the notice of appointment, and the periodic assessments and ratings of the contracting officer. They will also include a copy of any document suspending, revoking, or terminating the appointment.

The General Manager, PP&PD, must maintain complete case files on all contracting officers. A copy of all case file updates must be sent promptly to the General Manager, PP&PD.

Recertification

1. *Retraining.* At least once every three years, contracting officers must, as a condition for retaining their appointments, attend a minimum of two weeks' formal training in procurement, covering such areas as new requirements, techniques, or procedures brought about by changes in statutes, regulations, policies, business research, or evaluations of Postal procurement practices.

2. *Approval.* The APMG, Procurement and Supply, must approve all recertifications by appointing officials.

Effective Date and Coverage

The requirements stated in PH 1.5.2-VI through X apply to appointments made after January 1, 1989 (including the reappointment of contracting officers on or in advance of the ending date of their current appointments, if any). Appointing officials are responsible for developing career management plans for contracting officers appointed before January 1, 1989, in terms of satisfying the qualification requirements of PH 1.5.2-VI or VII. All contracting officers must satisfy those requirements by January 1, 1990.

**Exhibit 1 for PH 1.5.1, Delegations of Authority by the APMG, Procurement and Supply
Authorities and Responsibilities Under the PM—Procurement and Supply Department**

**AUTHORITIES AND RESPONSIBILITIES UNDER THE
PM—PROCUREMENT AND SUPPLY DEPARTMENT**

APMG, Procurement and Supply

- 1.1.1.a Issue the Procurement Manual (PM).
- 1.1.1.c Issue, in the Procurement Handbook (PH), procedural guidance and forms necessary to implement the PM.
- 1.1.2.a Establish all procurement policies and procedures except those unique to mail transportation as to real property and related services.
- 1.1.2.d Serves as chairman of the Procurement Policy Committee (PPC).
- 1.2.1 Issue and maintain the PM.
- 1.3.2.b Issue PM changes that are approved by the PPC. Return unapproved changes to originators, with explanation.
- 1.4.2.c.1 Make or authorize PM deviations concerning matters common to all Postal Service contracts, when only one contract is involved or when more than one contract or contractor is affected.
- 1.5.2.c.1 Appoint contracting officers (COs) and delegate authority to appoint COs.
- 1.5.2.c.2 State specific limitations on a CO's authority. Keep copies of all CO Certificates of Appointment.
- 1.5.2.c.3 Periodically review COs' performance. Recertify COs every three years in the same appointment.
- 1.5.2.c.4 Terminate CO appointments by letter before they expire.
- 1.6.2 Delegate authority consistent with the PM.
- 1.7.5.c Approve provision for progress payments in a contract (with Controller approval in addition for contracts over \$1,000,000).
- 1.8.2.a Receive reports of suspected anticompetitive practices for which the General Manager, Procurement Policies and Program Division, believes there is reasonable evidence of violation of Federal antitrust laws. Forward such reports to the Investigations Division of the Postal Inspection Service.

**Exhibit 1 for PH 1.5.1, Delegations of Authority by the APMG, Procurement and Supply
Authorities and Responsibilities Under the PM—Procurement and Supply Department (continued)**

1.9.2.b.4	Designate individual contracts or classes of contracts as exempt from Provision 1-2, Contingent Fee Representation, and Clause 1-6, Contingent Fees.
1.9.5	Take appropriate action in cases of misrepresentation concerning contingent fees, or other violation or breach of Clause 1-6, Contingent Fees.
2.1.3.b	Designate one or more procurement planners to handle specific procurements or categories of procurement.
2.1.3.e	Approve comprehensive plans for requirements estimated at over \$5,000,000.
2.1.3.f	Approve, at least two years prior to the fiscal year of the intended purchase, comprehensive plans for requirements estimated at over \$10,000,000.
3.1.3	Establish contracts for use Postal Service-wide or on a limited geographical or organizational basis.
3.1.6.c	Approve the restriction of a particular purchase to prequalified contractors (except where authorized by PM Chapters 8 and 11).
3.3.2.c	Establish and maintain a consolidated list of contractors debarred, suspended, or ineligible for contracts or subcontracts. Ensure that the list is changed as necessary and distributed to all purchasing offices. Arrange to receive pertinent information from GSA, and notify GSA of any USPS debarment or suspension determination or any change in the status of contractors on the USPS list.
3.3.2.d	Issue a written determination in cases where there is a compelling reason in the interest of the Postal Service to solicit proposals or quotes from, award contracts to, consent to subcontracts with, or add new work to contracts held by debarred or suspended contractors.
3.3.2.e	Debar a contractor, with General Counsel concurrence.
3.3.2.g.2	Remove debarment or reduce the period of debarment, deny removal or reduction, or forward the application for removal or reduction to the Judicial Officer for hearing and final USPS determination. Transmit to the Judicial Officer, for filing, a notice and statement of the reasons for any removal or reduction of debarment that is approved.
3.3.2.h.1	Initiate a debarment proceeding by sending a written notice to the contractor, with a copy to the Chief Postal Inspector, Attention: Special Investigations Division.

**Exhibit 1 for PH 1.5.1, Delegations of Authority by the APMG, Procurement and Supply
Authorities and Responsibilities Under the PM—Procurement and Supply Department (continued)**

3.3.2.h.2	Forward to the Judicial Officer any request for a hearing received from a contractor who is served a notice of proposed debarment.
3.3.2.i	Suspend a contractor when in the interest of USPS, with General Counsel concurrence.
3.3.2.k	Cause a notice of suspension to be served, with a copy to the Chief Postal Inspector, Attention: Special Investigations Division.
3.3.2.k.2	Answer inquiries concerning the suspension of a contractor, in coordination with the General Counsel.
3.3.2.k.3	Determine in writing that extension of a suspension is necessary.
4.2.1.b	Establish a ceiling higher than \$50,000 for the use of simplified purchasing procedures when justified by circumstances of competition and price reasonableness.
4.5.5.a	Determine that award should be made, in the interest of the Postal Service, without awaiting decision on a protest.
5.1.7.c.1	Approve use of a letter contract when no other type of contract is available.
5.1.7.d.2	Approve insertion in Clause 5-18, Limitation of Postal Service Liability, of a maximum liability amount that exceeds 50 percent of the estimated cost of the definitive contract.
6.4.5.d.5	Approve, for recoupment of progress payments, use of any liquidation method other than the ordinary method (liquidation at the same rate as the progress payment rate).
6.8.3.n	Decide to pursue Court of Appeals review of a PSBCA decision that goes against the Postal Service, with the concurrence of the General Counsel or the General Counsel's designee.
6.9.3.a.3	Recommend to the SAPMG, Facilities and Supply, that incurred liquidated damages be remitted in whole or in part.
8.3.2.a	Concur in Office of Communications and Technology (OCT) technical standards for the acquisition of information systems.
8.4.4	Approve use of the research announcement technique.
10.2.7	Determine that a contract is essential and must be awarded without complying with one or more requirements of EO 11246.

**Exhibit 1 for PH 1.5.1, Delegations of Authority by the APMG, Procurement and Supply
Authorities and Responsibilities Under the PM—Procurement and Supply Department (continued)**

10.2.11.b	Exempt any contractor or subcontractor (or any group or category of contractor or subcontractor) from any provisions of Clause 10-15, Affirmative Action for Handicapped Workers, in the interest of the Postal Service.
10.2.11.e	Receive CO-forwarded complaints concerning the Rehabilitation Act of 1973, and give specific instructions on resolving them.
10.2.12.b.2	Submit CO justifications for proposed exemptions to Clause 10-16, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, through channels to the Postmaster General and the Director, OFCCP.
10.2.12.d	Receive CO-forwarded complaints concerning the Vietnam Era Veterans Readjustment Assistance Act of 1972, and give specific instructions on resolving them.
10.3.2.a	Authorize deviations from Buy American Act policy and procedure.
10.3.2.c	Determine that sufficient and reasonably available commercial quantities of satisfactory quality do not exist domestically, or that purchase of a domestic-source end project would be inconsistent with USPS interest or unreasonably costly.
10.3.3.c.2	Determine that a construction material is not mined, produced, or manufactured in the United States in sufficiently and reasonably available commercial quantities of satisfactory quality.
10.3.4	Determine that the articles and materials listed in this subsection are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of satisfactory quality, or that it would be inconsistent with the interest of the Postal Service to apply Buy American policy to these articles or materials.
39 957.4 (a) (App. D)	Initiate a debarment proceeding by serving the proposed respondent a written notice.
39 957.8 (d) (App. D)	Make written acknowledgments of notice receipt a part of the record of the debarment proceeding.
39 957.9 (App. D)	(implied) Provide evidence on which the Judicial Officer will base a decision if the respondent fails to appear at the hearing.
39 957.10 (App. D)	State, in the notice of proposed debarment, the extent to which the proceedings before the Postal Service will be based upon a record of facts obtained from another agency.

**Exhibit 1 for PH 1.5.1, Delegations of Authority by the APMG, Procurement and Supply
Authorities and Responsibilities Under the PM—Procurement and Supply Department (continued)**

General Manager, Procurement Policies and Programs Division (PP&PD)

- | | |
|-----------|--|
| 1.1.2.d.3 | Maintain minutes of Procurement Policy Committee (PPC) meetings. |
| 1.2.2.a | Receive Form 7380 requests for copies of the PM. |
| 1.4.2.c.1 | Make or authorize deviation from the PM when only one contract is affected. |
| 1.4.2.d | Maintain centralized records on PM deviations. |
| 1.8.2.a | Review reports of suspected anticompetitive practices. Send reports to the responsible APMG if there is reasonable evidence of violation of Federal antitrust laws. |
| 3.1.3.c | Approve procedures for award of systems contracts to qualified sources after competition. |
| 4.4.2.c | Instruct contracting officers in how to resolve situations in which an offeror or contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and no other source is available. |
| 5.1.1.c | Approve the use of a contract type not described in section 5.1. of the PM, when in USPS's interest. |
| 5.3.3.f.3 | Dispose of the matter when a contracting officer must withhold an award or modification because the offeror or contractor repeatedly refuses to provide needed cost or pricing data. |
| 8.5.2.b.1 | Receive notice and documentation, including a record of negotiations, in cases where a USPS contracting officer obtains utility services through use of a purchase order or the supplier's own commercial forms and clauses because the supplier refuses to execute Form 7302, <i>Utility Service Contract</i> . |
| 10.1.5.d | Receive contractors' quarterly reports of prime contractor subcontracts with small and minority-owned businesses. |
| 10.2.5.1 | Transmit to the Department of Labor's Wage and Hour Division all USPS contracting officers' requests for exceptions to the requirement that contracts include representations and stipulations of the Walsh-Healey Public Contracts Act. |

**Exhibit 1 for PH 1.5.1, Delegations of Authority by the APMG, Procurement and Supply
Authorities and Responsibilities Under the PM—Procurement and Supply Department (continued)**

Procurement Policies and Programs Division (PP&PD)

- 3.1.3.c Establish systems contracts.
- 3.3.2.c.3 Transmit to the APMG, Procurement and Supply, a copy of each order debarring or suspending a contractor or removing a debarment or suspension (as furnished by the Judicial Officer).
- 8.1.2.b Receive copies of supplemental policy and procedure directives from policy-originating officials, for cataloging, indexing, and incorporation in the Procurement Handbook.
- 8.3.2 Develop and implement procurement strategies and standards for information systems and components.
- 10.2.11.f Receive and disseminate notice that the Department of Labor has imposed sanctions on a contractor for violation of Clause 10-15, *Affirmative Action for Handicapped Workers*.
- 10.2.12.e Receive and disseminate notice that the Department of Labor has imposed sanctions on a contractor for violation of Clause 10-16, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era*.

General Manager, Procurement Technical Support Division

- 2.3.3.d Approve the product description before solicitation issuance when a nonconstruction requirement is estimated to exceed \$50,000 and only one acceptable brand-name product is specified.

Exhibit 2 for PH 1.5.1, Delegations of Authority by the APMG, Procurement and Supply
APMG Delegations of Procurement Authority

APMG DELEGATIONS OF PROCUREMENT AUTHORITY

<u>PM Citation</u>	<u>To Whom</u>	<u>Limitations</u>
1.4.2.c.1 Certain Deviation Approvals	Directors, P&MMSCs Director, Off. of Proc. GM, PP&PD	May not be redelegated May not be redelegated May not be redelegated
1.5.2.c.1 Contracting Officer Selection	Directors, P&MMSCs Director, Off. of Proc. GM, PP&PD Managers, P&MMSOs Manager, Support Services, Standard Divisions Managers, Contract Branch, WASC & EASC Director, Support Services, Special Divisions	May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated
1.5.2.c.2 Contracting Officer Appointment	<i>Note: Maximum authority is shown below; an individual's contracting officer certificate may specify a lesser amount.</i>	
	Directors, P&MMSCs	\$2,500,000
	Director, Off. of Proc.	\$3,000,000
	GM, PP&PD	\$1,000,000
	Managers, P&MMSOs	\$ 250,000
	Director, Support Services, Special Divisions	\$ 250,000
	Manager, Support Services, Standard	\$ 50,000
	Managers, Contract Branch, WASC & EASC	\$ 500,000
1.5.2.c.3 Recertification of Contracting Officers	Directors, P&MMSCs Director, Off. of Proc. GM, PP&PD Managers, P&MMSOs Directors, Special Divisions Manager, Support Services, Standard Divisions Managers, Contract Branch, WASC & EASC	May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated
1.5.2.c.4 Contracting Officer Termination	Directors, P&MMSCs Director, Off. of Proc. GM, PP&PD Managers, P&MMSOs Field Director, Support Services, Special Divisions Manager, Support Services, Standard Divisions	May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated May not be redelegated

Exhibit 2 for PH 1.5.1, Delegations of Authority by the APMG, Procurement and Supply
APMG Delegations of Procurement Authority (continued)

<u>PM Citation</u>	<u>To Whom</u>	<u>Limitations</u>
	Managers, Contract Branch, WASC & EASC	May not be redelegated
1.7.5.c Progress Payments	Directors, P&MMSCs Director, Off. of Proc.	\$500,000; may not be redelegated \$500,000; may not be redelegated
3.3.2.c Consolidated List Establishment and Maintenance	GM, PP&PD	
3.3.2.d Awarding to Debarred/Suspended Contractors	Directors, P&MMSCs Director, Off. of Proc.	May not be redelegated May not be redelegated
4.2.1.b Establishing Higher Ceilings for Simplified Purchasing	Directors, P&MMSCs Director, Off. of Proc.	May not be redelegated May not be redelegated
5.1.7.c.1 Use of Letter Contracts	Directors, P&MMSCs Director, Off. of Proc.	May not be redelegated May not be redelegated
5.1.7.d.2 Higher Maximum Liability Approval For Letter Contract	Directors, P&MMSCs Director, Off. of Proc.	May not be redelegated May not be redelegated
6.4.5.d.5 Unusual Progress Payment Liquidation Methods	Directors, P&MMSCs Director, Off. of Proc.	May not be redelegated May not be redelegated
Approval of Unauthorized Contractual Commitments	Directors, P&MMSCs Director, Off. of Proc.	Upper limit \$50,000; may not be redelegated Upper limit \$50,000; may not be redelegated
Approving Requests for Noncompetitive Procurement Actions	Directors, P&MMSCs Director, Off. of Proc. GM, PP&PD	Upper limit \$50,000; may not be redelegated Upper limit \$50,000; may not be redelegated Unlimited, but with approval of APMG

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination
Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation

**ACTIONS FOR WHICH THE PM REQUIRES APPROVAL,
CONCURRENCE, ADVICE, OR CONSULTATION**

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
CHAPTER 1: AUTHORITY, RESPONSIBILITY, AND POLICY		
1.4.2	Deviate from PM requirements	Forward a request for deviation through channels to the appropriate approving official (see 1.4.2.c). Send a copy to the General Manager, Procurement Policies and Programs Division (PP&PD), Procurement and Supply Department (P&SD).
1.7.3.b	Deny a public request for records	Get concurrence of assigned counsel.
	Extend the required (see 39 CFR 265.7(b)(4)) 10-working-day period for response to public requests for information	Get concurrence of assigned counsel.
1.7.5.b	Act upon a procurement request that calls for advance payments	Verify that the requesting organization has obtained the approvals required by Management Instruction FM-610-85-1, Advance Payments; if over \$50,000, obtain the approval of the APMG, Procurement and Supply.
1.7.5.c	Use progress payments	Make a written determination and obtain approval of the APMG, Procurement and Supply. If contract exceeds \$1,000,000, obtain approval from the Controller as well as the APMG.
1.7.6.a.2	Develop a solicitation provision that restricts competition to offerors not subject to a conflict of interest or that limits eligibility for future contracts or subcontracts	Get concurrence of assigned counsel.

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination
Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation (continued)

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
1.9.5	Take appropriate action in case of contingent fee misrepresentation or other violation	Refer to the APMG, Procurement and Supply. Take any action directed by the APMG.
CHAPTER 2: PROCUREMENT PLANNING		
2.1.3.e	Concur in a comprehensive procurement plan for a requirement estimated at over \$5,000,000	Verify APMG, Procurement and Supply, approval of plan, before the requisition is accepted.
2.1.3.f	Concur in a comprehensive procurement plan for a requirement estimated at over \$10,000,000	Verify APMG, Procurement and Supply, approval of plan, at least 2 years in advance of the fiscal year of the intended purchase.
2.3.3.d	Use, for a requirement over \$50,000, a product description that specifies only one acceptable brand-name product	Get approval of the General Manager, Procurement Technical Support Division, before issuing the solicitation.
CHAPTER 3: SOURCES		
3.1.3.e	Enter into a regional ordering agreement for items not under national contract (Service Center COs)	Give the General Manager, PP&PD, P&SD, at least 15 days notice, before entering the agreement. Follow PP&PD directions.
3.1.6.c.3	Restrict a particular purchase to prequalified contractors (unless authorized by Chapter 8).	Get approval, through channels, from the APMG, Procurement and Supply.
3.3.2.d	Solicit proposals or quotes from, award contracts to, or consent to subcontracts with debarred, suspended, or ineligible contractors	Verify determination in writing by the APMG, Procurement and Supply, stating that such action is in USPS's interest.
	Add new work to the contract of a debarred, suspended, or ineligible contractor	Verify determination in writing by the APMG, Procurement and Supply.

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination
Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation (continued)

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
CHAPTER 4: PURCHASING METHODS		
<u>PM*</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
4.1.6.c.3	Permit offeror to correct mistake in its proposal--if mistake and intent are clear	Get concurrence of assigned counsel.
4.2.1.b.1	Use simplified purchasing procedures for a purchase or category of purchases exceeding \$50,000	Get permission from the APMG, Procurement and Supply.
4.3.2.b	Purchase supplies or services from one source without competition	Ensure justification and approval as required by MI AS-710-88-?, Procedures for Submitting Requests for Noncompetitive Procurement Actions.
4.4.2.c	Decide on action when offeror or contractor insists on an unreasonable price or demands an unreasonable profit or fee, and no other source is available	Refer to General Manager, PP&PD, P&SD, for instructions.
*PH 4.3.III 4 requires concurrence of legal counsel for payment of unauthorized supplies and/or services.		
4.5.5.a	Award a contract when a timely protest has not yet been resolved	Refer to APMG, Procurement and Supply, who will make a determination after consulting with counsel. If authorized to make award before protest resolution, notify the protester, any other commenting parties, and the General Counsel (if before the General Counsel).

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination
Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation (continued)

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
4.5.5.b	Decide on appropriate action when a protest eligible for consideration is received after award	Get advice from assigned counsel.
4.5.6.c	Determine appropriate action when unable to decide that a protest received is obviously meritorious	Either refer to the General Counsel for resolution <u>or</u> , with concurrence of assigned counsel, determine that the protest is without merit and advise protester in writing.
CHAPTER 5: CONTRACT PRICING		
5.1.1.c	Use a type of contract not described in PM 5.1	Get approval from the General Manager, PP&PD, P&SD.
5.1.7.c.1	Use a letter contract when no other type of contract is suitable	Get approval from the APMG, Procurement and Supply.
5.1.7.d.2	(For a letter contract) Insert in Clause 5-18, Limitation of Postal Service Liability, a maximum liability amount that exceeds 50 percent of the estimated cost of the definitive contract	Get approval from the APMG, Procurement and Supply.
5.3.3.f.3	Reach appropriate disposition when offeror/contractor repeatedly refuses to provide needed cost or pricing data	Withhold award or modification. Refer matter to the General Manager, PP&PD, P&SD. Document the ultimate disposition.
CHAPTER 6: CONTRACT ADMINISTRATION		
6.4.4.e	Decide appropriate action when a third-party claim is received for monies otherwise due the contractor	Immediately notify assigned counsel, who will provide instructions.

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination
Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation (continued)

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
6.4.5.b.1	Reduce or suspend progress payments when costs incurred vary substantially from progress under the contract	Get advice from technical personnel and assigned counsel in determining how much payment is justified.
6.4.5.d.5	Use, to recoup progress payments, any liquidation method other than the ordinary one (liquidation rate same as progress payment rate)	Get approval from the APMG, Procurement and Supply.
6.4.5.b.1	Permit contract novation	Consult counsel in determining whether novation is advisable.
6.8.3.b	Decide a claim, by or against a contractor, that cannot be resolved by agreement	Review the facts, get assistance from assigned counsel and other advisors, and issue a final decision in writing.
6.9.3.b.2	Determine that termination for default, rather than for convenience, is appropriate	Consult with purchasing personnel, technical personnel, and legal counsel.
6.9.3.b.7	Issue a notice of termination for default when nonperformance is not cured within time period stated in a demand for adequate assurance	Coordinate with assigned counsel before issuing the notice.
CHAPTER 7: BONDS, INSURANCE, AND TAKES		
7.1.10.a.3	Determine appropriate action when a contractor's failure to perform has necessitated a claim against a surety, and the surety does not respond or refuses to pay	Get procedural assistance from assigned counsel.
7.1.10.b.2	Enter into a takeover agreement that establishes the surety's rights to payment from unpaid earnings	Get the concurrence of the APMG, Procurement and Supply.

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination
Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation (continued)

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
7.2.4.c	Waive the requirement for errors and omissions insurance, in whole or in part	Get concurrence of assigned counsel.
7.3.1.a and 7.3.3.d	Resolve tax questions, including those requiring consideration during solicitation preparation	Get assistance from assigned counsel.
7.3.1.b	Negotiate with a taxing authority to determine whether a tax is valid or applicable, or obtain a tax exemption or refund	Consult with the Office of Contracts and Property Law before entering negotiations.
7.3.3.b.2	Depart from normal procedure by designating, in the solicitation, a prime or subcontractor as a USPS agent for tax exemption purposes	Coordinate first with assigned counsel.
7.3.3.c	Determine appropriate action when a State or locality asserts a right to tax USPS property or a contractor's possession or use of, or interest in, the property	Get advice from assigned counsel.
CHAPTER 8: SPECIAL CATEGORIES OF CONTRACTS		
8.2.1.c.1	Modify Clause 8-1, Non-disclosure (Professional Services)	Get approval of the policy-originating official shown in Exhibit 8.1.2.
8.3.2.d.3	Make an information system purchase over \$50,000 from a commercial source	Ensure advance Office of Communications and Technology (OCT) approval.
8.4.4.a.2	Use a research announcement when there is reason to expect meaningful proposals that offer varying approaches	Get approval from the APMG, Procurement and Supply.

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination
Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation (continued)

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
8.5.2.b.4	Settle questions on tax charges in connection with utility service contracts	Refer questions to assigned counsel.
CHAPTER 9: PATENTS AND DATA RIGHTS		
9.2.1.b	Determine that entering into an alternate arrangement is more in USPS's interest than is acquiring title in an invention under a contract covered by 9.2.1.a	Consult with the requiring activity and patent counsel.
9.2.1.d	Negotiate an alternate agreement on patent rights after award of a covered contract, when in USPS's interest	Seek advice from patent counsel before starting negotiations.
9.2.1.e	Provide for USPS acquisition of patent rights, or solicit an alternate agreement, for a contract not covered under 9.2.1.a	Get the concurrence of patent counsel.
9.2.3.c.1	Waive or modify the right to patent indemnification	Get prior approval of patent counsel.
9.3.2.f.2	Approve any variance from the contractor's obligation to grant USPS a paid-up, nonexclusive, irrevocable, worldwide license to copyrighted data	Get the concurrence of assigned counsel.
9.3.7.c	Waive the contractual requirement that the contractor assign to the Postal Service its rights in copyrighted special works	Get the concurrence of the Law Department.

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination*Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation (continued)*

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
9.3.9.a.2	Respond to a request for payment of royalties	Forward any information to the Law Department, which will advise on any royalties that are excessive or that need not be paid.
CHAPTER 10: SOCIOECONOMIC POLICIES		
10.2.5.j.1	Handle a protest of the contracting officer's written determination of ineligibility under the Walsh-Healey Act (41 U.S.C. 35-45) (when, after review of submitted evidence, the protester is still deemed ineligible)	Forward protest to the Administrator, Wage and Hour Division, U.S. Department of Labor (DOL) for final determination.
10.2.5.j.2	Make an unfavorable decision when, before award, an offeror challenges the eligibility of an apparently successful offeror	Forward the protest and all pertinent material to the DOL Wage and Hour Division, for final determination. Withhold award pending the final determination (or determine, and document, the need for prompt award).
10.2.5.l	Take exception to the requirement that Walsh-Healey representations and stipulations be included in a contract	Submit a request for exception to the Administrator, Wage and Hour Division, DOL, through the General Manager, PP&PD, P&SD.
10.2.6.b	Respond to a contractor inquiry about the applicability or interpretation of the Fair Labor Standards Act (29 U.S.C. 201-219)	Tell the contractor or its employees that DOL has jurisdiction, and refer them to the Regional Administrator, Wage and Hour Division, DOL.
10.2.7.b.5	Award a contract absent compliance with one or more EO 11246 requirements	Obtain APMG, Procurement and Supply, determination that the contract is essential and award is in USPS's interest.

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination
Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation (continued)

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
10.2.7.b.6	Omit from a contract (or from groups or categories of contracts) one or more EO 11246 stipulations, when required by special circumstances in the national interest; or exempt contractor facilities that are totally separate and distinct from the contract work	Request an exemption by submitting a justification to the Director, Office of Federal Contract Compliance Programs (OFCCP), through the APMG, Procurement and Supply.
10.2.7.c.1	Award a nonconstruction contract over \$1,000,000 that is not exempt from equal employment opportunity requirements	Request the appropriate OFCCP regional office to conduct a compliance review of the contractor and any known first-tier subcontractors with subcontracts of \$1,000,000 or more (except when a review has been done within the 12 months before award).
10.2.7.c.4	Award a contract absent preaward compliance review when award is urgent or critical, or would be delayed beyond the time specified for proposal acceptance	Obtain a finding from the APMG, Procurement and Supply, that award is necessary. Inform the Director, OFCCP, and request a postaward review.
10.2.7.h	Take action, as well as administrative sanctions and penalties, against a contractor found in violation of equal employment opportunity requirements	Act upon the written direction of the Director, OFCCP.
10.2.10.e.8	Question the applicability of the Service Contract Act to a particular contract	Forward for resolution to the Associate General Counsel, Office of Contracts and Property Law, or to the Regional Counsel, as appropriate. If it is determined that the Act does not apply, advise the Department of Labor of the basis for the decision.

Exhibit for PH 1.5.2-III, Contracting Officer Actions Requiring Coordination
Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation (continued)

<u>PM</u>	<u>ACTION</u>	<u>REQUIREMENT</u>
10.2.11.b.1(c)	Exempt a contractor or subcontractor (or any group or category of contractor or subcontractor) from any provisions of Clause 10-15, Affirmative Action for Handicapped Workers	Submit a justification to the APMG, Procurement and Supply, who may grant the exemption.
10.2.11.e	Respond to a complaint that concerns employment of the handicapped	Forward the complaint to the APMG, Procurement and Supply. Investigate the matter or attempt resolution only upon specific instructions from the APMG.
10.2.12.b.3	Exempt any contract or category of contract from any part of Clause 10-16, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era	Submit a detailed justification to the APMG, Procurement and Supply, for submission through channels to the Postmaster General and the Director, OFCCP.
10.2.12.d	Respond to any complaint concerning the Vietnam Era Veterans Act	Forward to the APMG, Procurement and Supply. Investigate the matter or attempt resolution only upon specific instructions from the APMG.
10.3.2.c	Purchase a foreign end product when a comparable domestic-source product is not sufficiently available, not in USPS's interest, or unreasonably costly	Seek a determination by the APMG, Procurement and Supply.

**Exhibit for PH 1.5.2-IV, Actions Requiring Approval, Concurrence, or Advice from Assigned Counsel
Authorities and Responsibilities Under the PM or Referenced in the PM—Law Department ***

**AUTHORITIES AND RESPONSIBILITIES UNDER THE PM OR
REFERENCED IN THE PM—LAW DEPARTMENT**

General Counsel

- | | |
|----------------------------|---|
| 1.7.3.b/39 CFR 265.6(b) | Approve Records Officer instructions concerning determination of whether the public interest is served by the release of records exempt from mandatory disclosure under the Freedom of Information Act. |
| 1.7.3.b/39 CFR 265.7(b)(4) | Concur in an extension of the 10-working-day period for response to public requests for information (as requested by a custodian at Headquarters). |
| 1.7.3.b/39 CFR 265.7(e) | Decide appeals when requests to inspect or copy information under the Freedom of Information Act are denied, when a timely determination is not made, or when requests for fee waiver are not granted. Review the correctness of custodian action or failure to act, even when no appeal is made. |
| 1.7.4/39 CFR 266.7(a)(1) | Decide appeals when requests to inspect, copy, or amend records under the Privacy Act are denied, or when no timely determination is made. |
| 3.3.2.e | Concur in a department head's debarment of a contractor. |
| 3.3.2.i | Concur in a department head's suspension of a contractor. |
| 3.3.2.k.2 | Either answer, or coordinate with the department head who answers, any inquiry concerning suspension of a contractor. |
| 6.8.3.n | Concur in the responsible APMG's decision to appeal to the Court of Appeals for the Federal Circuit an adverse decision of the Board of Contract Appeals. |
| Exhibit 8.1.2 | Originate supplemental policy and procedure directives addressing legal services procurement requirements. Provide a copy to the Procurement Policies and Programs Division upon issuance and to the public upon request. Verify, at least annually, the currency and |

*PH 4.3.III 4 requires concurrence of legal counsel for payment of unauthorized supplies and/or services.

Exhibit for PH 1.5.2-IV, Actions Requiring Approval, Concurrence, or Advice from Assigned Counsel
Authorities and Responsibilities Under the PM or Referenced in the PM—Law Department (continued)

- | | |
|------------------------|---|
| | continuing applicability of each such directive, and issue changes. |
| 8.2.1.c.1 | Approve any modification of Clause 8-1, Nondisclosure (Professional Services), before inclusion in a contract for legal services. |
| 39 CFR 957.7 (App. D) | Submit, on behalf of the department head who initiated the proceeding, a reply to a request for Judicial Officer hearing. |
| 39 CFR 957.23 (App. D) | File a written reply to a party who applies for modification or revocation of an order of debarment. |
| 39 CFR 955.28 (App. E) | Designate Postal Service counsel to represent USPS before the PSBCA. |

Law Department

- | | |
|----------------------------|---|
| 3.3.2.h.2, 957.14 (App. D) | Represent the department head initiating a debarment proceeding in the Judicial Officer hearing and related proceedings. |
| 9.3.7.c | Concur in a contracting officer's decision to waive a contractual requirement to assign copyright to the Postal Service. |
| 9.3.9.a | Examine information on royalties and advise the contracting officer of any that are excessive or that USPS is not obligated to pay. |

Deputy General Counsel

- | | |
|-----------|--|
| 1.1.2.d.2 | Serve as a permanent member of the Procurement Policy Committee (PPC). |
|-----------|--|

Associate General Counsel, Office of Contracts & Property Law

- | | |
|---------|---|
| 4.5.7 | Decide protests filed directly with the General Counsel, protests for which the primary addressee cannot be determined (4.5.3.b), and protests which contracting officers refer to the General Counsel for resolution. (Or decline to decide protests when the matter involved has been decided or is being decided in court; see 4.5.7.o.) |
| 4.5.7.m | Maintain a file of all protest decisions. |

**Exhibit for PH 1.5.2-IV, Actions Requiring Approval, Concurrence, or Advice from Assigned Counsel
Authorities and Responsibilities Under the PM or Referenced in the PM—Law Department (continued)**

10.2.10.e.8 Resolve questions about the applicability of the Service Contract Act when the DOL Wage and Hour Division requires retroactive application of a wage determination but the contracting officer at Headquarters questions the applicability.

Assistant General Counsel, Office of Contracts & Property Law

4.5.6.c.2 Concur in a contracting officer's determination that a protest received by the contracting officer is obviously without merit.

Office of Contracts and Property Law

7.3.1.b Consult with any contracting officer who seeks to negotiate with a tax authority to determine tax validity or applicability or to obtain a tax exemption or refund.

Regional Counsel

1.7.3.b/39 CFR 265.6(d)(4) Advise postmasters concerning the release of the recorded names and addresses of post office box holders, when postmasters are unable to determine whether business use is involved.

1.7.3.b/39 CFR 265.7(b)(1) Advise custodians who are not USPS officers concerning the denial of requests to inspect or copy records under the Freedom of Information Act.

1.7.3.b/39 CFR 265.7(b)(4) Concur in an extension of the 10-working-day period for response to public requests for information.

1.7.3.b/39 CFR 265.10(a)(4) Respond, with authorization from the employee, to a request from a non-Federal source for medical information on the employee.

10.2.10.e.8 Resolve questions about the applicability of the Service Contract Act when the DOL Wage and Hour Division requires retroactive application of a wage determination but the contracting officer questions the applicability.

**Exhibit for PH 1.5.2-IV, Actions Requiring Approval, Concurrence, or Advice from Assigned Counsel
Authorities and Responsibilities Under the PM or Referenced in the PM—Law Department (continued)**

11.1.3.d/39 CFR 255.1(c)(3) Advise local officials on whether particular complaints concerning handicapped access seek to end unlawful discrimination or to request special arrangements.

Assigned Counsel [or "Counsel," "Legal Counsel," "Assigned Legal Counsel," or "Legal Advisors"]

1.7.6.a.2 Consult with contracting officers who seek to develop solicitation provisions that restrict competition to offerors not subject to a conflict of interest, or that limit eligibility for future contracts or subcontracts.

4.5.5.b Advise contracting officers in determining, in regard to eligible protests filed after award, whether to allow the contractor to proceed, seek mutual agreement, suspend performance on a no-cost basis, issue a unilateral stop-work order, or take other appropriate action.

4.5.6.c.2 Concur in a contracting officer's determination that a protest received by the contracting officer is obviously without merit.

4.5.7.f Assist contracting officers in preparing reports concerning protests received by the General Counsel.

6.4.5.b.1 Advise contracting officers on the amount of progress payment justified under a nonconstruction contract.

6.5.4.b.1 Advise contracting officers on whether to permit contract novation.

6.8.3.b Assist contracting officers in reaching decisions on claims by or against contractors that cannot be resolved by agreement.

6.9.3.b.2 Consult with contracting officers who seek to ensure that termination for default rather than termination for convenience is appropriate.

6.9.3.b.7 Advise contracting officers prior to their issuance of notices of termination for default.

7.1.10.a.3 Give contracting officers procedural assistance when sureties refuse to pay or do not respond to written notices.

**Exhibit for PH 1.5.2-IV, Actions Requiring Approval, Concurrence, or Advice from Assigned Counsel
Authorities and Responsibilities Under the PM or Referenced in the PM—Law Department (continued)**

- | | |
|------------|--|
| 7.1.10.c.4 | Advise contracting officers on whether construction projects are substantially complete. |
| 7.2.4.c | Concur in contracting officer waivers, in whole or in part, of the requirement for errors and omissions issuance. |
| 7.3 | Assist contracting officers in dealing with all tax questions, and specifically: <ul style="list-style-type: none">7.3.1.c Questions concerning USPS constitutional immunity from State or local taxes7.3.2.a Questions on Federal excise tax requirements7.3.3.b.2 Designation of prime contractors and subcontractors as USPS agents for the purpose of clarifying exemption from State or local taxes7.3.3.c.1 Assertion by a State or locality of its right to tax USPS property directly, or to tax a contractor's possession or use of, or interest in, the property7.3.3.d Matters requiring special consideration—such as when the applicability of a tax is in litigation, depends on place and terms of delivery, etc. |
| 8.5.2.b.4 | Advise contracting officers on whether charges indicated as taxes on utility bills must be paid. |
| 9.3.2.f.2 | Concur in contracting officer approval of any variance from the contractor's obligation to grant USPS a paid-up, nonexclusive, irrevocable, worldwide license to copyrighted data. |

Patent Counsel

- | | |
|---------|--|
| 9.2.1.b | Consult with contracting officers on whether an alternate arrangement, rather than acquiring title, is in USPS's best interest. |
| 9.2.1.d | Advise contracting officers prior to their negotiation of an alternate agreement on patent rights following award of a covered contract. |

Exhibit for PH 1.5.2-IV, Actions Requiring Approval, Concurrence, or Advice from Assigned Counsel
Authorities and Responsibilities Under the PM or Referenced in the PM—Law Department (continued)

- | | |
|-----------|--|
| 9.2.1.e | Advise contracting officers concerning USPS acquisition of patent rights or solicitation of alternate agreements for contracts not covered by 9.2.1. |
| 9.2.2.b.2 | Respond to patent and copyright infringement claims. |
| 9.2.3.c.1 | Grant approval prior to a contracting officer's waiver or modification of USPS's right to patent indemnification. |



1.7 General Policies

1.7.7 Standards of Conduct

Ensuring Compliance with PM Requirements

Each manager of a Postal Service procurement organization is responsible for ensuring that every employee within the organization reads the *Code of Ethical Conduct for Postal Employees* each year.

Each employee must sign and date a sheet in which he or she is specifically named, to certify that he or she has read and understood the code and will comply with it. This sheet will become a permanent part of the employee's file.

1.7.8 Gratuities

Inspection Service Authorities and Responsibilities (1.7.8.c)

The Inspection Service is responsible for investigating all allegations of waste, fraud, and abuse. This responsibility extends to allegations both internal and external to the Postal Service's procurement function. The Inspection Service maintains a hotline for reporting suspected violations.

The exhibit for this procedure, "Authorities and Responsibilities Under the PM—Inspection Service," summarizes all procurement-related activities of the Inspection Service as set forth in the PM.

To determine whether the PM requires coordination with the Inspection Service before taking a specific action, contracting officers can also refer to the exhibit for PH 1.5.2-III, "Actions for Which the PM Requires Approval, Concurrence, Advice, or Consultation."

Exhibit for PH 1.7.8, Inspection Service Authorities and Responsibilities
Authorities and Responsibilities Under the PM—Inspection Service

AUTHORITIES AND RESPONSIBILITIES UNDER THE PM—INSPECTION SERVICE

Chief Postal Inspector

- | | |
|----------------------------|--|
| 1.7.3.b
39 CFR 265.6(c) | Authorize disclosure of records or information compiled for law enforcement purposes to persons outside the Postal Service. |
| 3.3.2.h.1 | Receive copies of debarment notices issued by department heads. |
| 3.3.2.k.1 | Receive copies of suspension notices issued by department heads. |
| 10.2.4.e.7(b) | Review contracting officer reports of contractor, lessor, or subcontractor underpayments totalling \$500 or more under USPS construction contracts or lease agreements. Forward reports to the Secretary of Labor. |
| 10.2.4.3.7(c) | Review contracting officer reports of contractor, lessor, or subcontractor underpayments (under construction contracts or lease agreements) that are willful and violate the False Affidavits Act or another criminal statute. |
| 1.7.3.b
39 CFR 265.6(d) | Confirm that information requested orally by a law enforcement agency is needed in the course of a criminal investigation. |
| 1.7.8.c | Review information or allegations concerning acceptance by a Postal Service employee of gratuities of any kind from contractors or persons seeking contracts or other business. Advise the contracting officer of findings. |
| 6.8.2.d | Review contracting officer reports of unsupported contractor claims for which there is evidence of fraud or misrepresentation of fact on the contractor's part. |
| 1.8.2.a | Receive reports of suspected violation of the Federal antitrust laws. The Inspection Service refers the matter to the Attorney General, if appropriate, for prosecution. |

Chapter 2

Procurement Planning

2.1 Policy and Procedures

2.1.1 General

Planning the Procurement Method and Strategy	2.1-1
Checklist: Agenda for Annual Summary Plan Meeting	2.1-24

2.1.2 Market Research

I. Guidelines	2.1-2
Exhibit 1: Source List for Market Research	2.1-25
Exhibit 2: Suggested Publications for your Library	2.1-27
II. Equipment Modification and Testing Agreements (2.1.2.c.9)	2.1-4
III. Locating Minority Business Enterprises	2.1-5

2.1.3 Advance Planning

The Concept of Advance Planning	2.1-6
---------------------------------------	-------

2.1.4 Individual Plans

Developing Individual Plans	2.1-6
Checklist: What Should Be Considered in Preparing an Individual Plan?	2.1-38
Outline: Individual Plan Outline	2.1-41

2.1.5 Implementation Plans

Coordinating Implementation Actions	2.1-7
Format: Format for Implementation Plan	2.1-45

2.1.6 Source Selection Plans

I. When a Source Selection Plan is Not Needed	2.1-7
II. Determining the Source Selection Approach	2.1-8
III. Elements and Format of a Source Selection Plan	2.1-9
IV. Establishing a Schedule	2.1-10
V. Administrative Matters	2.1-11
VI. Guidance on Evaluation Panels (2.1.6.b)	2.1-12
VII. Guidance on Evaluation Criteria (2.1.6.c)	2.1-16
Matrix 1: Subject Areas and Assessment Criteria	2.1-47
Matrix 2: Comparability Among SOW, Evaluation Criteria, and Proposal Requirements	2.1-48
Flow Diag.: The Evaluation, Negotiation, and Selection Process	2.1-49
Checklist: General Information to Request for Pricing Proposals	2.1-50

2.2	Planning Considerations	
2.2.1	Quality Requirements	
	I. Quality Assurance and Inspection	2.2-1
	II. Reviewing Requisition Packages	2.2-2
	Checklist: Considerations Affecting Solicitation Preparation	2.2.10
2.2.2	First Article Approval	
	Establishing Test Criteria for First Article Approval	2.2-2
2.2.3	Acceptance	
	Guidelines for Acceptance	2.2-2
2.2.4	Warranties	
	I. Requiring Notice of Warranty	2.2-3
	II. Planning for a Warranty Clause	2.2-4
	III. Negotiating Exclusions in Commercial Warranties	2.2-5
	IV. Period of Warranty	2.2-6
2.2.5	Delivery or Performance Schedule	
	I. General Requirements for Delivery	2.2-6
	Table: Matrix of Delivery and Schedule Related Clauses	2.2-13
	II. F.o.b. Points (2.2.5.e)	2.2-7
	III. Delivery Incentives	2.2-7
2.2.6	Liquidated Damages	
	Planning for Liquidated Damages	2.2-8
2.2.8	Options	
	Including Options Clauses in Contracts	2.2-9
2.3	Specifications	
2.3.1	General	
	Specifying Requirements	2.3-1
2.3.3	Product Descriptions	
	Using Brand Names in Specifications	2.3-2
	Sample: Brand-Name or Equal Product Description	2.3-3

2.1 Policy and Procedures**2.1.1 General****Planning the Procurement Method and Strategy****Responsibilities of Procurement Personnel**

Procurement planning is essential to the success of any procurement activity. This Handbook section addresses those areas in the planning process that you, as a key procurement team member, should understand and use. Keep one ground rule in mind throughout the process—there is no plan unless it is written. You must commit your mental concept of a plan to paper so you can measure actual progress against planned progress, and modify your approach as events dictate. The planning descriptions and checklists in the following subsections will provide you with the guidance and tools needed to design and implement successful plans.

While many aspects of procurement planning are in fact accomplished by nonprocurement personnel, the ultimate responsibility for a successful procurement rests primarily on the assigned procurement office. In light of this responsibility, it is incumbent on the procurement office manager to be proactive. That means getting out to the requiring activities and ensuring that they provide the procurement office with plans that are comprehensive, realistic, and timely.

Therefore, the senior procurement official at *each* location with procurement responsibility should conduct a planning session at least annually with those persons in charge of requirements determination within the procurement office's authority. The topics to be covered should at a minimum include those set out in the checklist for this procedure, "Agenda for Annual Summary Plan Meeting." After conducting the planning session, the procurement office manager should prepare an informal record of the meeting and a letter of guidance, if appropriate, regarding those topics that are of particular importance for the annual summary plan (see PM 2.1.3.c).

Legal Counsel As a Business Advisor

As the Postal Service moves to the private corporate model, the role of counsel as business advisor becomes more important. Greater discretion in contracting method, contract language, and even contract remedies requires greater use of counsel as an advisor. Of course, procurement personnel should feel free to consult with counsel at any time in the procurement process particularly before initiating action in situations such as the following:

- Any procurement in which patent rights, data rights, or software rights are an issue.
- Any procurement for which a comprehensive procurement plan (see PM 2.1.3.e) will be required.
- Any procurement of legal services.
- Any procurement relating to rights in real estate.

- Any license agreement (except standard license agreements in connection with a simplified purchase of commercial software for a single microcomputer).

2.1.2 Market Research

I. Guidelines

Planning Your Approach

Market research is a process of collecting and analyzing information about the marketplace to learn the best approach for the purchase of products or services. You should conduct some form of market research on all purchases over \$5,000. Effective market research helps you to identify current technology and trends, understand the commercial marketplace, and reach possible suppliers of innovative products and services.

The two basic approaches used in the collection of information for market research are the broadcast method and the target method. These approaches may be used independently, or combined to improve information gathering capabilities.

1. *Broadcast method.* Request information from prospective suppliers through announcements in the *Commerce Business Daily* (CBD) or through paid advertisements in local newspapers or other publications directed to the industry that offers the product or service you seek. Use this approach to research a wide range of firms.
2. *Target method.* Identify firms from which you wish to solicit information, then call or write them directly. Use this approach to encourage participation of firms with particular capabilities and a proven reputation for quality and service. Another aspect of this method involves developing current information about commodity and technology areas in which the Postal Service has an interest in light of current or anticipated requirements. Use this approach to develop an in-depth understanding of technology and commodities the Postal Service acquires. This knowledge will create a basis for more informed buying decisions and an opportunity for strategic approaches to developing specifications, structuring solicitations, timing buys, and aggregating requirements.

Exhibit 1 for this procedure, "Source List for Market Research," suggests sources of information on firms, industries, trends in technology, and the marketplace. Many contracting offices maintain a comprehensive library. See Exhibit 2 for this procedure, "Suggested Publications for Your Library," for cost and source information in setting up such a library. If your office does not maintain a comprehensive library, many of the directories and journals can be found in public libraries, and the Procurement Technical Division (PTD) at Postal Service Headquarters has many of these sources on-line.

Collecting and Analyzing the Information

After collecting market information through these methods, you may still have questions or require additional information. Plan inspections, site visits, and interviews to obtain the information you need. You may also ask selected firms to submit comments on your program plan, your draft specifications, or the basic need that you are trying to fulfill.

When you have gathered sufficient information, analyze the responses you received from industry. Identify those products or services which provide good value to the Postal Service and those companies that can effectively, efficiently, and responsibly provide the products or services needed by the Postal Service.

The information you should have include:

1. Descriptions of products or services, including standards, specifications, and special terminology;
2. Catalogs, price lists, and rate sheets;
3. General company capability statements and specific descriptions of technical competencies and facilities;
4. Firm characteristics such as size and ownership;
5. Indications of a company's willingness to compete;
6. Comments from companies on your program plans; and
7. Comments from companies on your draft statements of work.
8. Information on prior Postal and other purchases (pricing, performance, and customer satisfaction data).

Developing Overall Market Research in Your Assigned Areas

Market research is a continuous activity; it should not start with the identification of the requirement. You should devote a portion of your time to keeping current on new products and processes in your area of responsibility. The major factors that will affect the detail and time spent on market research for an individual procurement are:

1. The complexity of the product or service being purchased;
2. The anticipated dollar value of the purchase; and
3. The recentness of previous market research.

It is your responsibility to constantly update your market data. You are the expert the Postal Service relies upon in those commodity areas to which you have been assigned procurement responsibility. Therefore, to fully discharge your duties, you should know as much as possible about the commodities or services you are buying.

You must seek out what is new and available in the marketplace. To achieve this end it is your responsibility to inform and educate industry regarding Postal Service needs. One approach to accomplish this is the use of informational briefings and conferences. These may be privately sponsored or initiated and sponsored by the Postal Service. Postal Service personnel make presentations at these conferences regarding broad Postal Service goals and the technology required to achieve those goals. Experience indicates that industry will respond positively to these presentations. As a result, new sources and innovative technology will be identified.

The Procurement Technical Division (PTD) has a significant market research capability and can provide assistance on many aspects of your market research.

II. Equipment Modification and Testing Agreements (2.1.2.c.9)

Circumstances for Use

In planning for the procurement of untested equipment these primary goals should be considered:

1. How can Postal Service technical risk be minimized?
2. How can Postal Service costs be minimized?

One way to achieve these goals is the use of Equipment Modification and Testing (EM&T) agreements (formerly called "Release Loan" Agreements). The concept underlying EM&T can be simply stated as "fly before you buy." Prerequisites for EM&T agreements are:

1. Specified equipment performance characteristics have been identified during the planning process;
2. Existing equipment can be used or modified for use to meet the Postal Service performance requirements; and
3. Sources are willing to participate and underwrite all or a portion of the required modification and testing.

Advantages of EM&T Agreements

1. The Postal Service does not have to risk substantial funds to acquire untested equipment. The contractor may be willing to underwrite (finance) all or a portion of the modification and testing costs to demonstrate the "superiority" of its equipment in an effort to qualify for the formal production procurement that will normally follow the test program.
2. The Postal Service is able to identify and segregate the acceptable sources of supply from the unacceptable at relatively low cost.

Steps in the EM&T Agreement Process

1. Solicit sources of supply for testing contracts, requesting both technical and cost proposals that support a program to test the capabilities of each offeror's equipment in meeting performance levels established by the Postal Service in the solicitation.
2. Award one or more contracts (assuming at least one is acceptable).
3. Conduct oversight and evaluation of in-plant tests. This phase of EM&T is essentially "hands on" market research.
4. If appropriate, deliver equipment to a designated Postal Service facility (in the field) for "live" testing.
5. Issue a solicitation for equipment production, using the results of the field tests in the solicitation development and source selection process.

Payment Obligations of the Postal Service

It is possible that some businesses may participate in market research under an EM&T agreement at no cost to the Postal Service, while others will charge for either equipment modifications (if required) or test preparation costs, or both. In those cases where the Postal

Service agrees to pay some costs, partial payments under EM&T contracts are typically limited to three installments:

1. 25 percent of the contract price for contractor's preparation for in-plant testing. To qualify for this payment, the contractor must demonstrate successful progress.
2. 35 percent of the contract price after successful completion of in-plant testing. Payment of this sum is conditioned on demonstration of a product that meets the test requirements, not just completion of the test procedure.
3. The balance after successful completion of the field live-testing. The contractor's equipment must pass the field test before this final payment is approved.

III. Locating Minority Business Enterprises

Sources

PM 10.1.3 requires contracting officers to perform market research to locate and compile source lists of minority-owned businesses. Consult the following sources in addition to those in Exhibit 1 for PH 2.1.2-I, "Source List for Market Research."

1. National minority business enterprise publications and directories provide help in locating businesses owned and operated by minority business groups. "Firms in the 8(a) Business Development Program" (a Government publication), "Try Us" and "Guide to Obtaining Directories" (private sector publications) are examples. See Exhibit 2 for PH 2.1.2-I, "Suggested Publications For Your Library," for ordering information.
2. Automated Query Systems
 - a. *PASS* (Procurement Automated Source System), a computerized data base developed by the SBA which lists about 67,000 small suppliers, indexed by type of ownership, location, number of employees, labor surplus area, and other factors. Contact your nearest SBA office for information.
 - b. *Profile*, an automated data base management system developed by the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce, which matches procurement needs with minority vendors who can fill them. It lists about 30,000 minority-owned businesses. Contact the nearest area or regional MBDA office.
 - c. The *Vendor Information Service* (VIS), a data bank of minority vendors maintained by the National Minority Supplier Development Council (NMSDC), a private nonprofit group sponsored by 144 corporations, and available to members of its service. The national office and 50 branch offices also sponsor trade fairs and provide assistance in establishing and maintaining minority enterprise purchasing programs. Write to: NMSDC, 1412 Broadway, 11th Floor, New York, NY 10018-3306.
3. Your State's Office of Minority Business Enterprise.
4. Your local Council for Equal Business Opportunity.
5. Current and past minority suppliers—they can refer you to others.
6. Local minority business directories, trade associations, and trade fairs.

2.1.3 Advance Planning

The Concept of Advance Planning

Guidelines

Advance planning is a process by which the efforts of all personnel responsible for a procurement are coordinated and integrated in a plan to fulfill Postal Service needs. It may involve personnel from the requisitioning office, the procurement office, quality assurance, maintenance, engineering, and finance. Advance planning often determines the overall success or failure of a procurement.

Under the Postal Service's capital investment policies and procedures, you and the project manager must undertake advance planning for procurements identified in PM 2.1.3. The level of detail and extent of coverage of each plan will be based on these considerations:

1. Dollar amount.
2. Critical, highly visible, or politically sensitive procurements.
3. Major first-time Postal Service acquisitions.
4. Major procurements requiring approval of the Board of Governors or other Postal Service executives.
5. Procurements involving complex technical requirements.
6. Equipment Modification and Testing Agreements.

Content of Annual Summary Plans

The annual summary plans required by PM 2.1.3.c are to cover all planned buys expected to exceed \$50,000. They need not be elaborate, but should cover the following elements:

1. Products and services to be procured.
2. Estimated dollar amount of the procurement.
3. Quantities required.
4. Delivery or performance schedule requirements.
5. Dates that purchase requests will be submitted to procurement offices.
6. Suggested purchase methods for other than simplified purchases (competitive, noncompetitive).
7. Requisitioner *and* end user identification.

2.1.4 Individual Plans

Developing Individual Plans

Individual plans, described in PM 2.1.4, expand upon the information provided in the annual summary plans. Requiring activities are responsible for developing individual plans. See

the checklist for this procedure, "What Should be Considered in Preparing an Individual Plan?" and the outline for the procedure, "Individual Plan Outline." The checklist lists the major considerations involved in evaluating a given procurement. It is used to ensure that all elements of good planning are identified, discussed, and eventually documented in a written plan. The outline spells out what should be included in an individual plan.

2.1.5 Implementation Plans

Coordinating Implementation Actions

The implementation plan is more than a simple milestone chart. While the milestone events and completion dates are important, the critical part of the plan is the identification of "who does what." See the format for this procedure, "Format for Implementation Plan." The contracting officer has overall responsibility for a procurement, but many actions are outside the control of the contracting officer. The implementation plan must clearly delineate who is responsible for which activities, to prevent such unnecessary fiascos as a key evaluator scheduling vacation in the middle of the technical evaluation process.

2.1.6 Source Selection Plans

I. When A Source Selection Plan is Not Needed

You are not required to prepare a source selection plan in those procurement situations in which price or price-related factors are the sole basis for proposal evaluation and contractor selection. Price and pre-related factors are ordinarily the sole basis for evaluation and source selection under the following circumstances:

1. Adequate price competition exists.
2. Primary or secondary pricing procedures can be used to determine the reasonableness of price.
3. A complete, definitive, and unambiguous specification, purchase description, or statement of work is available for use in the solicitation package. For example:
 - a. The specification is published as a Postal Service, Federal, or military specification.
 - b. The item being purchased is a standard commercial item sold in substantial quantities to the general public.
 - c. The Postal Service purchased the supplies or services before using essentially the same specification and performance was satisfactory, indicating that the specification is an adequate baseline for satisfactory performance.
4. The contractor is not developing or designing the item to be delivered under the contract. For example, if you are dealing with functional specifications or merely a statement of end objectives or performance standards, a source selection plan will probably be appropriate.

II. Determining the Source Selection Approach

When price or price-related factors are not the sole basis for proposal evaluation and contractor selection, you must, at a minimum, detail how you will address the requirements listed in PM 2.1.6 in your source selection plan. There will probably only be a few procurements a year within the entire Postal Service that utilize all of the structures and formal processes detailed in the procedures that follow in this Procurement Handbook series. In most cases, the contracting officer functions as the source selection committee.

Source selection is an important process, but it is a means to an end, not an end in itself. The precise nature of the process, the detail and complexity of the evaluation criteria, the size of the evaluation panel, the managerial level at which the selection decision should be made, the level of detail in the documentation, the schedule, and similar decisions should be driven by the requirement. There is no way to design a process that is right for all source selections. In fact, only one general rule applies: Keep it simple.

The three key factors to assess in developing a source selection plan are the *nature*, *complexity* and *sensitivity* of the requirement.

1. *Nature of the requirement*

"Off-the-shelf" describes an item regularly produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for sale. Off-the-shelf items are generally commercial items described in catalogs and offered for sale to the general public. They may be described in commercial or Postal Service specifications, and include services provided to the general public on an as-needed basis.

"Postal Service" denotes items designed and produced to meet Postal Service specifications for non-standard items.

2. *Complexity of the requirement*

Complex products or services are those for which compliance with the specifications or statement of work must be established through detailed analysis and evaluation by several technical disciplines.

Simple products or services are those for which simple measurement and test or checklist review are sufficient to determine compliance with requirements.

3. *Sensitivity of the requirement*

Sensitive requirements have a significant dollar value or are susceptible to media or legislative scrutiny. Successful and timely performance is imperative.

Nonsensitive requirements have a low dollar value and performance failure would not seriously affect Postal Service operations.

Be practical in choosing your evaluation criteria and procedures. Design a process which is feasible, will provide accurate and useful findings, and will be fair to all concerned. Tailor your approach to the nature, complexity, and sensitivity of the procurement. Sensitive, high-value source selections will generally involve higher-level Postal Service management and require a different structure and more complex procedures than those needed for routine procurements.

Following is an analysis that considers the nature, complexity, and sensitivity of the requirement in offering guidelines for developing evaluation and selection approaches.

- *Off-the-Shelf (Simple and Non-sensitive):*
Use simple evaluation criteria with primary emphasis on quality and price standards. Keep the evaluation panel small—only two or three individuals. Use price analysis. Document findings with a summary memo. Require catalogs, advertising, and company brochures instead of special proposal formats. Evaluations should usually take no more than one to two weeks, without discussions or Best and Final Offers (BAFOs). The contracting officer picks the winner.
- *Off-the Shelf (Complex and Sensitive):*
Request specific information about management capacity, focusing on past performance (product quality and schedule compliance). Obtain more detailed descriptions of product or service methods and performance. Use price analysis. Evaluation time will be up to 60 days, with likelihood of discussions and BAFOs. The contracting officer generally picks the winner, but management may decide to establish a more formal source selection procedure and a source selection committee.
- *Postal Service (Complex and Sensitive):*
May require submission of cost or pricing data and performance of cost analysis as well as price analysis. Criteria could include cost realism as well as cost reasonableness. Technical evaluation panel assists price panel in determining cost realism. Detailed evaluation criteria are needed, with subject matter broken down to item level. Evaluation process may take 60 to 120 days, due in part to time required for cost analysis.

III. Elements and Format of a Source Selection Plan

The principal steps in planning a source selection are to—

1. Identify the evaluation team;
2. Develop evaluation criteria;
3. Establish evaluation procedures; and
4. Schedule the key events.

The source selection plan (SSP) is the written documentation of the results of the planning process. Review of the plan allows Postal Service management to ensure that the process is feasible, that the results will be accurate and useful, and that the source selection will be conducted with propriety so as to ensure public confidence in the final decision. The SSP is a key document in initiating and conducting the source selection. It should be jointly developed by the procurement office and the requiring activity. It must be submitted sufficiently in advance of the planned requisition to facilitate review and approval by the contracting officer and early establishment of the evaluation panel. The SSP must be approved before release of the solicitation.

A sample SSP format follows:

- *Part I. Program/Product Description.* Describe the key features of the requirement, as detailed in the specification or statement of work. Highlight any unique or unusual features or issues of complexity. Provide enough information to enable someone having little background in the procurement to understand what you are buying.

- *Part II. Purpose of Requirement.* Summarize why the product or service is needed and by whom.
- *Part III. Evaluation Criteria.* Identify the evaluation criteria, using the same language and format in which they will be described in the request for proposals. Describe the criteria weighting and the scoring system that will be used, including the scoring guidance (instructions for applying the scores).
- *Part IV. Milestone Schedule of Events.* Provide a schedule of key events, indicating the planned dates the events will take place.
- *Part V. Administrative Matters.* Describe the evaluation panel organization structure and membership. Describe where the evaluation panel will meet, evaluation documentation, and security precautions.

IV. Establishing a Schedule

A key to success in any source selection is a plan that identifies and schedules each event that occurs during the process. A list of the major evaluation and source selection events follows:

1. Preparation, coordination, and approval of source selection plan
2. Identification of prospective offerors
3. Prequalification screening
4. Selection of evaluation panel members
5. Solicitation preparation
6. Synopsis
7. Solicitation approval and release
8. Preproposal conference
9. Training of evaluation panel
10. Offeror inquiry cut-off date
11. Release of inquiry responses or solicitation amendment(s)
12. Receipt of proposals
 - a. Administrative review—check for compliance
 - b. Initial technical evaluation—technical acceptability
 - c. Qualitative analysis—scoring/ranking of proposals
13. Report of evaluation panel provided to contracting officer
14. Determination of competitive range
15. Release of competitive range notification
16. Discussions, fact-finding, negotiations
17. Report to source selection committee
18. Release of best and final offer (BAFO) request

19. Receipt of BAFOs
20. BAFO evaluation complete
21. Release of final evaluation panel report
22. Performance of an operational test or demonstration (if required)
23. Source selection decision
24. Final negotiations (if any)
25. Preaward Survey (if required)
26. Award approval (if required)
27. Award notification
28. Debriefings of unsuccessful offerors (if requested)

In establishing a target date for each event, planners must realistically estimate how long the preceding activities will take, considering such things as reasonable time for responses to inquiries, time needed for reading and writing, availability of clerical support, required typing time, and time for coordination and rewriting if necessary.

There is a tendency to cut proposal preparation, discussions, negotiations, and BAFO preparation time to a minimum as a means of shortening the process. The PM requires a minimum of 30 days for proposal preparation (PM 4.1.2.b) for nonstandard products and services.

Remember that the offeror needs time to analyze your requirement and the solicitation terms, make inquiries and receive your answers, issue solicitations to and receive proposals from subcontractors, and write, edit and publish the proposal.

Remember also that you must rely on that proposal to make a very important decision. Sufficient time must be allotted to permit development of a quality proposal. Unreasonably shortening that time is false economy.

A schedule is a best guess of how long some activity will take. Very few activities proceed exactly according to plan. Allow for this in making a schedule. Proposal evaluation time is largely a product of proposal size and the number of proposals received. If each proposal is 150 pages long, how long will it take evaluators to read each proposal carefully, comparing each to the standards and noting all deficiencies, summarizing the results for each, comparing notes and reaching a consensus with fellow panel members? How long will it take the evaluation panel to write up the documentation, apply the scores, and prepare its report?

V. Administrative Matters

In preparing to evaluate proposals, several important administrative matters need to be attended to: a place for the evaluators to work, clerical support for typing, file establishment and maintenance, and office supplies. Document control procedures are essential for the security of proposals and evaluation panel records. Careful attention to these matters will improve the prospects for a smooth process.

Facility

The evaluation panel will need a place to work. Evaluators must not be allowed, under normal circumstances, to work in their own offices. Not only will they be interrupted too frequently

to work efficiently, but the security of the source selection may be compromised. Moreover, evaluators can better assist one another if all are working in the same place.

The facility should provide a comfortable working environment because reading proposals and writing evaluations can be tedious and demanding work. It should be secured during nonworking hours to prevent unauthorized access.

Clerical Support

The evaluation panel will need clerical support to prepare evaluation documentation, requests for information, and evaluation reports and briefings. Clerical production can often be a serious bottleneck, so arrangements should be made for fully dedicated support, when needed. Security will usually require that clerical production take place in some secure location. It is undesirable to have to move materials around, because it complicates document control.

Security

Security is crucial. Improper disclosure of Postal Service information, evaluation panel documentation, or proposal contents can have serious consequences. Improper disclosure of proprietary information in proposals can result in civil and even criminal prosecution and/or disciplinary action.

Number and log *all* proposal copies upon receipt. The originals must remain in the contracting officer's file. Give only copies to the evaluators. Log copies out each morning and in each evening. No proposal may be taken from the evaluation panel facility except in extraordinary circumstances and only with the advance written approval of the contracting officer. See PH 6.2.2.III for disposition of unsuccessful offers.

Instruct evaluators not to write or underline in any proposal or use any highlighter. They must keep separate notes and file them in the facility each evening in a file marked with the evaluator's name. Evaluators may not keep their notes, or copies thereof, after the completion of the final evaluation report. Evaluator notes must not be taken from the evaluation facility at any time.

Number all drafts and copies of the evaluation report and supporting documentation and keep a log of their distribution. This report is strictly confidential. Upon approval of each version, initial and final, destroy all drafts and copies. Seal the original, marked with the legend: "To be opened only by the contracting officer," and place it in the contract file. This does not apply to the decision document, which is public information.

Log the distribution of *all* copies of any briefing documentation. Seal the originals of formal briefing documentation of evaluation panel findings with the original of the appropriate version, initial or final, of the evaluation report. Destroy *all* copies.

Appoint an evaluation panel recorder to ensure the performance of these security functions. The recorder may also be delegated responsibility for other evaluation panel administrative duties. The recorder should not be one of the evaluators.

VI. Guidance on Evaluation Panels (2.1.6.b)

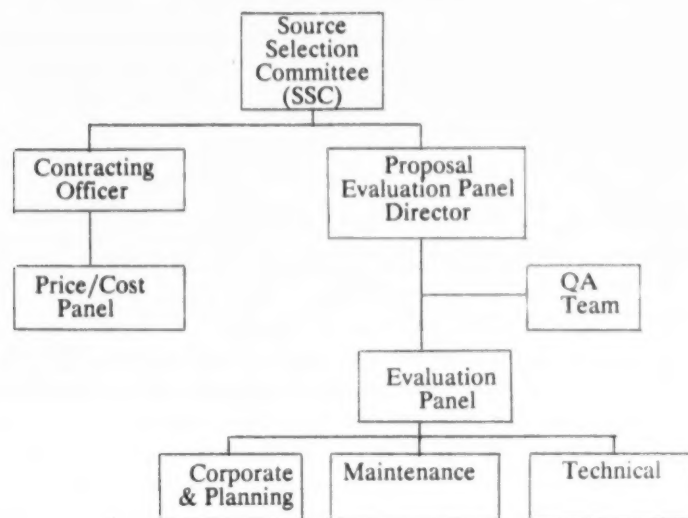
The source selection organization structure reflects the three primary functions in source selection:

1. Evaluating the proposals by comparing them to the evaluation criteria;

2. Determining the realism and reasonableness of the proposed price; and
3. Comparing the offerors' scores and prices and selecting the one who offers the best value to the Postal Service, all things considered.

The first two steps are more objective than the last. Judgment is what the process is all about, and all judgments are somewhat subjective. However, the first two steps involve the analysis and weighting of data in light of clearly defined evaluation criteria. The last step, selection, involves a judgment concerning which proposal offers the best deal for the Postal Service. The decision-maker takes into account the conclusions reached in steps one and two, but is not bound to agree with those conclusions.

The typical organization for most Postal Service source selections is as shown below.



Contracting Officer Authority

In accordance with PM 4.1.5.b.2, the contracting officer usually selects the winner. In so doing, the contracting officer considers, but is not bound by, the findings of the evaluation panel. The contracting officer is responsible for the overall conduct of the process.

The contracting officer must approve the SSP before the RFP can be released. He or she must ensure that the evaluation criteria are appropriate, the procedures to be used are sound, and the schedule is realistic. The contracting officer formally appoints the members of the evaluation panel, based on the recommendations of the head of the requisitioning activity.

Evaluation Panel Director's Role

The evaluation panel director directly supervises the work of the evaluation panel, must approve its findings before giving them to the contracting officer for use in selecting the winner, and has the final say in resolving differences of opinion among evaluation panel members. The evaluation panel director prepares the discussion agendas, which must be approved by the contracting officer before discussions, if any, can begin.

Evaluation Panel Responsibilities

This panel analyzes the technical and management information submitted by the offerors and evaluates it by comparison with the evaluation criteria. They do not compare proposals with each other, but with the evaluation criteria. This panel is typically divided into three separate teams on major procurements:

1. *Corporate capability and planning.* This team evaluates the training, management, and planning aspects of the proposals.
2. *Maintenance.* This team evaluates maintenance capabilities, spare parts and repair strategies, and the like.
3. *Technical.* This team evaluates the technical capabilities of the offerors and is often further divided into subteams, such as telecommunications, systems, and the like.

The evaluation panel decides whether a proposal meets, exceeds, or fails to meet the criteria; develops a list of deficiencies in each proposal (failure to meet a criterion); prepares requests for clarification (CRs) or additional information (RFIs); and scores the proposal to reflect the offeror's chances of success.

This team also performs the technical analysis of cost or pricing data, if submitted, by analyzing the proposed types and quantities of resources (materials, labor hours, etc.) and determining whether, in light of the information in the proposal, the offeror has proposed sufficient, insufficient or excessive resources in the cost proposal. It is sound procurement practice not to expose the technical team members to cost or pricing data until *after* the technical evaluation is essentially complete. Insulation from cost/price information permits a more objective technical assessment. If cost analysis is not performed, in accordance with PM 5.3.3.d, this function will not be performed. The evaluation panel may, however, assist in price analysis as requested by the price panel.

Price Panel Responsibilities

This panel performs cost and/or price analysis as described in PM 5.3.3. Their main goal is to determine if the proposed price is realistic and reasonable.

A realistic price is one which provides for adequate resources to perform the work described in the technical/management proposal. Realism involves the *internal* consistency of the proposal. It does not involve comparisons with competing proposals.

Reasonableness means that the price represents a fair value to the Postal Service in light of what is being offered and current market conditions. It should be noted that a cost or price may be unrealistically low, but reasonable in light of market conditions. Such a price may be acceptable to the Postal Service as long as it does not reflect a lack of understanding of the requirement or unwillingness to comply with the contract, if the offeror has the financial capacity and will to absorb the loss and still perform satisfactorily. However, what is a realistic cost-based price from an offeror may be unreasonable in light of prices otherwise available in the marketplace for the same or similar items. Such a proposal should be unacceptable to the Postal Service.

Status of Evaluation Panel Findings

The findings of the evaluation panel are meant to provide the contracting officer with information to use in making a selection. These findings should not dictate a selection, although, under most circumstances, the decision will be consistent with those findings.

It is important to note the distinction between findings and recommendations. The evaluation panel must report its findings, but must not make an award recommendation unless specifically asked to do so by the contracting officer (PM 4.1.5.b.3).

Discussion Team

This team consists of the contracting officer or the contracting officer's designated representative, the evaluation panel director, and any members of the technical/management and price panels needed to advise the offerors of their deficiencies, and resolve uncertainties or suspected mistakes.

The membership of the discussion team may change from one offeror to another as the discussion items change. It is preferred that the size of the discussion team be kept to the minimum essential to conduct meaningful discussions. Observers should not be permitted.

Determining Evaluation Panel Membership

Ideally, membership should be determined at the earliest possible date, prior to development of evaluation criteria. Members should actively participate in the development of evaluation criteria, procedures, and proposal preparation instructions. This is the best way to ensure that the process is efficient and effective.

Membership should reflect the requirement, including the nature of the product or service being purchased and the industry involved, the complexity of the requirement, and its sensitivity within the Postal Service. Use the people you need to answer the key questions, but remember that the smaller the team the more efficient it will be in most circumstances.

The technical team should include at least two representatives from the program or project office, and, if appropriate, functional experts in applicable fields such as logistics, engineering, telecommunications, training, maintenance, QA, manufacturing, or management. The size of the technical team depends upon the complexity of the acquisition. Each team member selected must be sufficiently knowledgeable of the procurement requirements and objectives to be readily capable of judging the quality of each proposal in each evaluation area for which he or she is assigned responsibility. The membership should include representatives of the requiring organizations having a direct interest in the procurement and qualified persons outside the Postal Service, if necessary, to provide complete evaluation capability. Whenever possible, persons serving as a contracting officer's representative (COR) should not be members when their contractor is expected to be one of the offerors, because close contact of evaluators with offerors should be restricted during proposal evaluation. Additionally, a contracting officer may have developed a bias toward the contractor based on events or experiences totally unrelated to a new procurement.

Sensitive Procurements

In sensitive procurements involving large dollar amounts and high visibility, it may be for upper management to actively participate in the evaluation and selection. In such instances the source selection decision should be made at a higher level of management than the contracting officer. When this is the case, the decision maker is designated the source selection committee chairman.

Whenever a SSC is designated, the work of the evaluation panel should be reviewed by it. The SSC is composed of senior management personnel. This group reviews the findings of the evaluation panel for consistency with the evaluation criteria, accuracy, and propriety.

Membership in the SSC may include management level personnel from the law department, finance, the requiring activity, and procurement. The contracting officer and the evaluation panel director should be members of the SSC.

Generally, the SSC is not bound by the findings of the evaluation panel. It has a much broader mandate and normally ranks the offerors in an order that reflects its own judgment. Some of the appropriate factors for the SSC to consider with respect to the offerors are—

- The most favorable business opportunity;
- Long-term compatibility with Postal Service objectives;
- Minimum risk combined with maximum technological gain; and
- Prospects for a long-term association.

The SSC may require offerors to make presentations to assist the SSC in making a judgment. Such presentations should summarize the offeror's proposal and highlight its business posture. An example of topics to be covered in such a presentation for a major ADP procurement might be factors relating to:

1. Technical direction, strength, and technological leadership;
2. Consistency, flexibility, and expandability of product family;
3. Software conversion feasibility;
4. Software licensing/cost issues; and
5. Ability to meet Postal Service implementation schedules and support Postal Service goals in standardization.

VII. Guidance on Evaluation Criteria (2.1.6.c)

In order to develop evaluation criteria you must first answer three questions.

- What are you going to evaluate?
- How are you going to determine its acceptability and relative merit in the eyes of the Postal Service?
- What information and which criteria are most important?

These questions are answered by developing the four elements of the evaluation criteria: subject matter for the proposal (what), assessment criteria and standards of measure (how), and weights (relative importance).

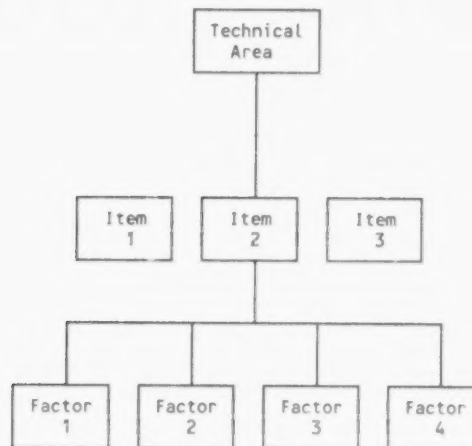
Subject Matter

Subject matter always involves three sets of information. The first is information about what the offeror plans to do or deliver to satisfy the Postal Service's specification. This is information about the nature of the proposed product or service. Obviously, this is directly related to the content of the specification. The second set of information concerns the offeror itself and its resources, experience, and record of performance. In other words, you want to evaluate the offeror's ability to deliver the proposed product or service. Lastly, of course, you want to evaluate price information.

The organization of the offerors' proposals should reflect these three subjects. First, there is the *Technical Area*, relating to the offeror's description of what it plans to deliver or do to

satisfy the specification. Second is the *Management Area*, which describes the offeror's capability (resources, experience, performance record) to deliver. Third is the *Price Area*, which tells the price of performance. You will evaluate all three and must write proposal preparation instructions designed to obtain information about all three in a usable format.

Subject areas can be broken down into smaller units of information in order to allow more detailed analysis. Areas may be broken down into items, and items into factors, as shown below:



Assessment Criteria

When you know what you will evaluate, the next question is how you will decide on the relative merits of the proposals. What factors will you consider when you read the offerors' descriptions of their proposed products or services, their capabilities, and their prices? These factors are called *assessment criteria*, and their orientation depends upon the nature of what you are buying, the industry that does that kind of work, and market conditions.

The dictionary defines a criterion as "a standard of judgment or criticism; an established rule or principle for testing anything."

The selection of criteria is a crucial step that largely determines who gets the contract. The criteria must therefore reflect those factors which determine successful performance. Here are some examples:

1. Technical

Compliance with requirements: Does the offeror's proposal provide convincing evidence that the proposed product or service will meet the performance and quality requirements listed in the specification?

Soundness of approach: Does the proposal clearly demonstrate that the offeror (a) understands what you want and (b) has a realistic plan for delivering it?

2. Management

Adequacy of resources: Does the offeror have the people, facilities, equipment, and financial capacity to do the work described in the technical area of the proposal?

Adequacy of experience: Does the offeror, either as a company or through its management personnel, have the background necessary to understand and satisfactorily accomplish the work?

Acceptability of past performance: Is there anything in the offeror's record of past performance to indicate that it lacks the integrity, the diligence, the tenacity, and the customer-oriented attitude necessary to satisfy the Postal Service?

3. Price

Price realism: Does this price reflect a valid estimate of the resources required to do the work (materials, labor, equipment, etc.)?

Price reasonableness: Is this a fair price to pay in light of the quality of the product or service being offered, the terms of the proposed contract, and the prevailing market conditions?

Note how the criteria described above are interrelated. You evaluate the *Technical Area*, the description of the proposed product or service, with an eye on the *Management Area*, the description of resources, experience and past performance. You ask yourself: Do I believe this offeror can do what it says it can do in the technical proposal with the people, facilities, equipment, experience and past performance described in the management proposal? Also, given what the offeror says it will do for us, the resources it will bring to bear, and the current market, is the price reasonable?

Your goal is to first determine how good the proposal sounds, then determine how credible it is, and, finally, determine how reasonable it is. To the extent the proposal is inadequate or unsubstantiated, or both, there is risk. The risk is that if you award to this offeror it will not be able to perform the contract.

Standards

Once you have established assessment criteria the really difficult work begins. You must establish standards to be used by the Postal Service evaluators in determining whether the proposal satisfies the criteria. The dictionary defines "standard" as a "basis for judgment."

Standards are predetermined measures of the minimum qualities proposals must have to satisfy the criteria. For example, what qualities must a proposal possess before you decide the approach is "sound," or that the resources are "adequate"? Standards may be quantitative or qualitative in nature. Though quantitative measures are best, they are not always possible to develop.

Some standards come right out of the specification, such as requirements for weight, speed, color, size, and frequency; they relate directly to the product or service itself. But others must be developed through research into the industry in question, such as those for management capability.

Once developed, standards make the actual process of evaluation much easier, because all the evaluator has to do is search the proposal for evidence that the proposal meets, fails to meet, or exceeds the standard. This, of course, involves judgment, interpretation, and weighing of the evidence. But the standard provides a common measure that ensures that all

evaluators are using the same basis for deciding whether the criteria have been met. Without standards, evaluators may find themselves applying different values, and the resulting score will not reflect a *common* assessment of the proposal's merits.

Standards are not included in the SSP and need not be developed at the time of approval of the SSP. However, they must be developed prior to issuing proposal preparation instructions, since standards dictate proposal content.

Weights

When you are evaluating proposals not all of the evaluation criteria will be equally important in determining which offer is the best value. Some things are more important than others, and evaluation panels must find a way to express these relative values in communicating their findings to the contracting officer.

In deciding how to express the weights of the various evaluation criteria, it helps to visualize the relationship between the subject areas and the assessment criteria, as shown in Matrix 1 for this procedure, "Subject Areas and Assessment Criteria."

Note that in the matrix there are five cells where subject areas and assessment criteria intersect. These cells constitute blocks of information that must be evaluated and scored. The question is, is each of equal importance or are some more important than others? Is Soundness of Approach to the Technical Area more important in determining which proposal is best, or is Compliance with Technical Area Requirements? Or are both equally important and more important than the management-related factors of Adequacy of Resources, Adequacy of Experience, and Satisfactory Past Performance? You must make these decisions during source selection planning and communicate them to the offerors in the RFP.

You may describe the relative importance of the various criteria in either of two ways. The first is by general statements, such as:

Criterion 1 is the most important, followed by 2 through 5 in descending order of importance.

This approach is best when adjectival scoring systems are used.

Alternatively, you may use specific numerical weights, which are best used with numerical scoring systems. Thus, the five criteria could be weighted as follows:

<u>Criterion</u>	<u>Weight</u>
1	0.50
2	0.20
3	0.15
4	0.10
5	<u>0.05</u>
Total	1.00

The analysis should lend itself to the development of meaningful evaluation criteria against which proposals may be evaluated. The evaluation criteria may include, for example, technical, management, schedule, logistic, or any combination of these evaluation areas. The evaluation must be consistent with the criteria set forth in the solicitation as the basis for award.

Technical approach and ability to meet stated minimum performance requirements ("mandatories") are of major importance in proposal evaluation. The term "technical" in this

context is not limited to scientific or engineering concepts or principals, but may include any performance skills which require education or training.

Proposal Preparation Instructions

Proposal preparation instructions tell offerors what information to submit and how to format the information. Both content and format depend upon the evaluation criteria, which, in turn, are based upon the specification.

In writing proposal preparation instructions it is important to preserve the relationship between the specification, the evaluation criteria, and the proposal. Doing so will make the evaluation process much easier than it would otherwise be.

Matrix 2 for this procedure, "Comparability Among SOW, Evaluation Criteria, and Proposal Requirements," shows the structural similarity between the three elements. Recall that the evaluation criteria involve subject matter, assessment criteria, standards, and weights. The subject matter always involves what product or service is proposed, offeror capability to provide the product or service, and price of performance. Logically, these are related to the specification, which describes the Postal Service's needs.

You need to tell offerors what information to submit. The checklist for this procedure, General Information to Request For Price Proposals, contains some overall pricing considerations. You must describe proposal content in enough detail to leave no doubt about your needs. Format must be consistent with the evaluation criteria so evaluators can easily find the information relevant to the criteria being applied.

The easiest way to determine your informational needs is to look at the evaluation criteria standards, since these are what the proposals will be compared against to determine their acceptability. This requires that you write the standards *before* you write the proposal preparation instructions. If you do not, you may find that the proposals do not include the information you need, because you have not asked for it. Or, the information may be scattered about in the proposal, making it difficult to find. This will necessitate discussions that lengthen the proposal evaluation process unnecessarily.

Page Limitations. You may want to limit the size of proposals by establishing limits on the number of pages submitted. This is not a requirement, but may be a good idea. Page limitations should never be established arbitrarily, however. They should be based on a careful analysis of your informational needs. Twenty pages may be a lot, or not nearly enough. It depends on what you are buying, your evaluation criteria, and your informational needs.

If page limits are established, you must enforce them. This is important in consideration of the need to be fair to all offerors. Do not necessarily reject proposals which exceed the page limitation, but remove the excess pages before giving the proposal to the evaluation panel. This may seem drastic, but it is entirely fair. Include a notice to this effect in the solicitation.

Other Limitations. Be careful not to be too restrictive about things such as type faces and size. Remember that in the era of word processing and desktop publishing a great variety of print production systems are in use and it may be no simple matter for a company to make changes in their systems in order to comply with such restrictions.

It is generally a good idea to have proposals submitted in three-ring, looseleaf binders, as this facilitates incorporation of proposal revisions and allows for distribution of proposal segments if different evaluation panel members will be evaluating different parts.

Scoring Systems

A score is nothing more than a shorthand expression of how well an offeror has met the evaluation standards. The detailed evaluation is contained in the evaluation narrative findings. Strictly speaking, a score is not necessary. The contracting officer can make his or her decision after reading the narrative report. However, the score summarizes that report. The purpose of the score is to provide the contracting officer and senior Postal Service officials a quick look at the findings of the evaluation panel.

Two types of scoring systems are available to the Postal Service: adjectival and numerical. You may use either. Examples of such systems are provided below.

1. Types of Scoring Systems

ADJECTIVAL SYSTEM

<u>Score</u>	<u>Scoring Guidance</u>
Exceptional	The proposal meets or exceeds the most important criteria in a way that is beneficial to the Postal Service. Risk is low and the proposal indicates a very high probability of successful performance. There are no deficiencies in major subject areas or items.
Acceptable	The proposal meets all significant standards. Risk is low and there is a good probability of success. There are no critical deficiencies, and others can be readily corrected.
Marginal	Some important standards have not been met. Risk is evident and there is a low probability of success. There are serious deficiencies in the proposal, but they are correctable.
Unacceptable	Several important standards have not been met. Risk is high and there is little likelihood of success. The proposal would have to be completely re-written to make it acceptable.

This system is similar to the common school grading system of assigning an A, B, C, D, or F to an examination paper, except that only four choices are available instead of five. The letter grade is a shorthand expression of the teacher's judgement concerning how well the student has learned the course material covered in the exam.

In the adjectival system, in order to distinguish between two proposals receiving "acceptable" scores, the contracting officer must read the detailed reports of the evaluation panel.

NUMERICAL SYSTEM

This system involves using a number to describe how well the proposal meets the standards. Examples involve the use of numerical ranges such as 0 to 10 (10 being best) or 0 to 100 (100 being best).

Numerical scoring is a popular method. In school, you probably took tests scored on the 0 to 100 range. A minimum score of 60 may have been required to pass. At least 70 was needed for a C, 80 for a B, and 90 for an A. The instructor was able to make distinctions among A's, however, since 95 was clearly a better score than 90. This was especially true if the number

somehow reflected the number of correct answers. Otherwise, it was merely a subjective judgment, making it difficult to clearly understand the differences in merit between a 92 and a 93.

This demonstrates the central problem in using numerical scoring systems. What conclusion can we reach about two proposals, one of which received a 9 and is priced at \$110,000, and the other of which received an 8 and is priced at \$100,000? Is the one point difference worth \$10,000 to the Postal Service? The answer depends on the basis used by the evaluation panel in assigning numerical scores.

Let us say we have five evaluators. Three score the proposal as a 9, while two score it as an 8. All agree the proposal is "very good." There are at least three ways to resolve the differences: (1) voting (the result would be a score of 9); (2) averaging the individual scores (resulting in 8.6); or, (3) discussion leading to consensus.

However, the key question is: What does the one-point difference indicate in terms of substantive proposal content, if anything? Is it merely the product of ill-defined and mostly subjective differences in value systems applied by the evaluators? If the difference cannot be resolved and made clear to the contracting officer, the decision may be faulty.

Scoring differences must be resolved through consensus and on the basis of clearly defined scoring guidance for assigning numbers.

You may construct any numerical scoring system acceptable to the contracting officer, as long as clear scoring guidance can be provided to the evaluators so that subjective, nonsubstantive differences in scores are minimized. (They are never entirely avoidable.) However, complex arithmetical schemes and formulas should not be used.

2. *Application of Scoring System*

The scoring system is merely a help to the contracting officer and other Postal Service officials. It should clearly communicate the findings of the evaluation panel as reflected in the evaluation reports so that the contracting officer may compare the proposals to one another in a meaningful way.

It is not necessary to develop a scoring system that conveys minor, inconsequential differences. Such a system would be too complex. Remember, in the final analysis, the contracting officer can refer to the detailed write-ups to distinguish between closely scored competitors.

You should be aware that both adjectival and numerical scoring schemes may be used on the same procurement. For example, a numerical range may be established for each adjectival rating. After an adjectival rating is assigned, a numerical score may be assigned. Numerical scores are typically easier to total and therefore significantly simplify the ranking process. This process is essential to the findings of the evaluation panel.

3. Summary

Typically, the evaluation panel's activities on large, complex procurements can be better understood in terms of the different phases of the evaluation in which they participate. You can see the evaluation process as having five phases.

- | | |
|---------|---|
| Phase A | The procurement office receives the offerors' proposals, logs them, and checks them for completeness. If a proposal is determined to be complete, it is forwarded to the technical evaluation panel. |
| Phase B | After receipt and logging of the proposals they are distributed to the various technical evaluation groups (that is, maintenance, technical, and corporate). Each group conducts a quantitative analysis of that portion of the proposal assigned to it. Determination is then made with regard to the proposals' acceptability. Requests for Information (RFIs) may be generated by the technical evaluation groups to clarify elements of offerors' proposals. Once each technical group documents its findings, the findings are reviewed by the technical evaluation quality assurance group for completeness and compliance with the solicitation. If all mandatory requirements are met and an offeror is determined to be quantitatively acceptable, the proposal then enters Phase C. |
| Phase C | In this phase the qualitative evaluation occurs. Points or adjective ratings are awarded based on the criteria identified in the solicitation. These findings are then reviewed by the quality assurance group to ensure that all assessments are consistent with the solicitation and sufficiently documented. This phase ends with submission of the technical evaluation panel's findings to the contracting officer. Functional or live test demonstrations may also be part of this phase. |
| Phase D | The contracting officer takes the findings of the technical evaluation panel and the findings of the price/cost panel and determines which offerors are within the competitive range. |
| Phase E | Following discussions and negotiations, an award decision is made by the contracting officer (or the source selection committee, if applicable). |

The contracting officer actively participates in all five phases. The crux of the technical evaluation process occurs in Phases B and C, but technical panel support is required by the contracting officer in Phase D. The entire process is presented in the flow diagram for this procedure, "The Evaluation, Negotiation, and Selection Process."

Checklist for PH 2.1.1, Planning the Procurement Method and Strategy
Agenda for Annual Summary Plan Meeting

AGENDA FOR ANNUAL SUMMARY PLAN MEETING

1. Pending Procurement Activities of Continuing Concern
 - a. Critical Requirements
 - b. Improvements to On-going Programs
2. New Procurement Requirements Critical to Operations
 - a. Description of Requirements
 - b. Funding
 - c. Approvals
 - d. Market Research
3. New Initiatives of Past Year
 - a. Description
 - b. Results
 - c. Feedback
4. Continuing Problem Areas
 - a. Products and Services
 - b. Sources
 - c. Procedures
 - d. Costs
5. Workload
 - a. Shortages and Crises Points
 - b. Contract Administration Issues
 - c. Long Range Plans

Exhibit 1 for PH 2.1.2-I, Guidelines
Source List For Market Research

SOURCE LIST FOR MARKET RESEARCH

1. General industrial registers or directories
 - a. *Thomas's Register of American Manufacturers*
 - b. *MacRae's Blue Book*
 - c. *Sweet's Catalog*
 - d. Metropolitan and regional directories provided by chambers of commerce and industrial developing agencies
2. Industry sources
 - a. Industry associations
 - b. Trade associations
 - c. Trade papers and journals
 - d. Professional associations
 - e. National and regional association publications
 - f. Industry buyers' guides
3. Classified telephone directories
4. Professional source services
 - a. Microfilm libraries
 - b. Data retrieval services
 - c. Inquiry services
5. Manufacturers' catalogs and sales literature
6. Pre-screened material
 - a. Source lists; "bidder's lists"
 - b. GSA Federal Supply Schedules

Exhibit 1 for PH 2.1.2-I, Guidelines

Source List For Market Research (continued)

- c. Responses to RFQs (Requests for Quotations)
- d. Responses to advanced procurement notices in CBD
- e. Federal Procurement Data Center

- 7. Attendance at major trade shows

- 8. Journals and other publications
 - a. Daily papers such as *The Wall Street Journal*, *Barrons*, and *London Economist*.
 - b. Magazines such as *Fortune*, *Forbes Business Week*, *Datamation*, *Computerworld*, *Government Computer News*, and *Purchasing*.

**Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library**

POSTAL PUBLICATIONS			
Source:	Title	Description	Applicability
By Form 7350, Supply Center Requisition, USPS Supply Centers	1. USPS Procurement Manual (PM), Volumes I and II	Contains mandatory regulations for contracting officers	Daily reference
	2. USPS Procurement Handbook (AS 707)	Contains guidelines that supplement the Procurement Manual	Daily reference
	3. USPS Facilities Design and Construction Handbook	Contains guidelines specific to facilities design, construction purchasing that supplement the Procurement Manual	Daily reference
	4. Handbook AS-701, Materiel Management	Provides the internal procedures of materiel management personnel	Reference as necessary
	5. Handbook AS-706, Quality Assurance	Explains the internal procedures of USPS Quality Assurance personnel	Reference as necessary
	6. Administrative Support Manual (ASM) 310	Provides organizational structure and general administrative policy and procedure of the Postal Service. Also covers local Purchasing, fuel, etc.	Reference as necessary
	7. USPS Directives Catalog (Publication 23)	Provides a listing of all Postal publications with ordering instructions	Reference as necessary
	8. Handbook AS-601, Index of Specifications, Purchase Specifications, Standards	Self-explanatory	Reference as necessary
	9. USPS Employee and Labor Relations (ELM) Manual	Provides day-to-day guidance on personnel-related procedures including the Code of Ethical Conduct	Reference as necessary. All employees should know location and have free access
	10. USPS Compass User's Manual	Provides detailed instructions for operation of the Computerized Procurement and Supply Systems (COMPASS)	Reference as necessary
	11. USPS Financial Management Manual (FMM)	Provides an overview of USPS financial activities and states USPS financial policies; details imprest fund procedures	Reference as necessary

Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library (continued)

<u>TITLE</u>	<u>DESCRIPTION</u>	<u>APPLICABILITY</u>
12. Handbook F-1, Financial Handbook for Post Offices	Includes procedures on payments for supplies and services	Reference as necessary
13. Handbook F-19, Accountability of Disbursing Officers	Includes procedures on the use of imprest funds.	Reference as necessary
14. USPS Equipment Catalog (Publication 47)	Provides details, including national stock numbers and Postal Service item numbers, on commonly used Postal Service equipment. Use as a tool for identification of requirements, as needed	Use as a tool for identification of requirements, as needed
15. USPS Forms Catalog (Publication 22)	Provides ordering information and lists USPS forms numerically	Use as a tool for identification of USPS forms, as needed
16. USPS Supply Catalog (Publication 24)	Provides ordering information and lists supply items which are available from Postal Service supply centers	Use for internal ordering and to check incoming requisitions for items that should be ordered through the supply center
17. Capital Investment Policies and Procedures (Publication 190)	Establishes policies, procedures, and responsibilities for all capital and applicable operating expense programs	Use as a guide for interoffice communications and understanding
18. Capital Investment Implementation Instructions (Publication 191)	Gives detailed procedural instructions for the broader policies contained in Publication 190	Use as a guide for interoffice communications and understanding
19. Applicable Regional, Headquarters, and local publications	Self-explanatory	Reference as necessary
20. Doing Business with Suppliers/Standards of Business Behavior and Ethics	Compilation of requirements for ethical conduct	Single publication for PSD employees providing guidance on ethical conduct.
21. Submitting Requests for Non-Competitive Procurement Actions (old version AS 710-82-3)	Gives detailed procedural instructions	Compliance
22. Postal Bulletin	'Up to date information on USPS policies, procedures and current events	Use to keep current
23. Handbook M-52 Fleet Management	Gives detailed procedural instructions	Use as a guide
24. Let's Do Business (Publication 5)	Explains how to do business with the U.S. Postal Service and contains information about minority enterprises	Use as a reference, provide to suppliers

Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library (continued)

<u>Title</u>	<u>Description</u>	<u>Applicability</u>
26. National Zip Code and Post Office Directory	A comprehensive zip code reference book	Reference as necessary
27. Document Generation System (DGS) Training Workbook	Structured, procedural training workbook for DGS	Self-paced training
28. Document Generation System (DGS) User's Guide	Guide to the automated system	Use and reference as necessary
29. Document Generation System (DGS) Programmer's Maintenance Manual	Descriptive maintenance manual	For use by systems analysts and programmers who are required to maintain the DGS system
30. Postal Service Board of Contract Appeals Decisions*	Self-explanatory	Use as a back-up to business decisions as necessary
31. Counsel Protest Decisions*	Self-explanatory	Use as a back-up to business decisions as necessary
32. List of Debarred, Suspended, or Ineligible Contractors*	Self-explanatory	Use as a resource for contractor non-responsibility determination
• (Appeals and Protests) Hq, United States Postal Service 475 L'Enfant Pl, W, SW Office of Contracts & Property Law Attn: Mr. William Jones Room 6627 Washington, D.C. 20260-1120 (202) 268-3001		
• (Debarred List) Procurement Policies and Programs Division Office of Plans Policies and Systems 475 L'Enfant Plaza, W, SW Washington, D.C. 20260-6201 (202) 268-4636		

Exhibit 2 for PH 2.1.2-I, Guidelines

Suggested Publications for Your Library (continued)

OTHER GOVERNMENT AGENCY PUBLICATIONS				
Title	Source	Cost	Description	Applicability
1. Commerce Business Daily	Superintendent of Documents US Government Printing Office Washington, D.C. 20402 (202) 783-3238	\$243 annually for first class mail; \$173 annually for second class mail	Contains daily listing of Government solicitations and awards, sales of surplus property; published five days a week	1. to verify publication of USPS procurements 2. to provide contracting personnel with names of other Government agencies buying similar requirements
2. General Services Administration (GSA) Supply Catalog	Submit GSA Form 457 to: General Services Administration Centralized Mailing Lists Services 819 Taylor Street PO Box 17077 Ft. Worth, TX 76102-0077 (817) 334-4040	Free to Federal users	Provides information on products and services available from GSA stores, and lists available supply schedules	to use existing Govern- ment sources when appropriate
3. GSA Index of Federal Specifications, Standards, and Commercial Item Descriptions	Submit P.O. with Fedstrip Activity Address Code General Services Administration Specifications Section Room 6662 7th & D Streets, SW Washington, DC 20407 (202) 472-2140	\$29.00	Provides alphabetic and numeric listing by Federal Supply Class, federal specification or standard, qualified product, and Commercial Item Description	to verify that USPS solicitations do not contain outdated or improperly referenced specifications
4. Federal Supply Catalog for Civil Agencies	Defense Logistics Services Center Attn: DLSC-UP Battle Creek, MI 49017-3084 (616) 961-4666	Free to Federal users	Provides list and ordering information on items procured by the Defense Logistics Service for Government-wide use	to use existing Govern- ment sources as appro- priate
5. DoD 4105.50-4 DoD Directory of Contract Administration Services Components	Headquarters-Defense Logistics Agency Attn: DLA-XPD Cameron Station Alexandria, VA 22304-6100 (703) 274-6011	Free to Federal users	Lists the components assigned to provide contract administration services (CAS) within designated geographic areas and at specified contractor plants.	for use when DCAS is delegated Contract Administrative Services

Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library (continued)

<u>Title</u>	<u>Source</u>	<u>Cost</u>	<u>Description</u>	<u>Applicability</u>
6. Discrepancies or Deficiencies in GSA, VA, or DOD Shipments, Material or Billings	Submit GSA Form 457 specifying Free to Federal mailing list code 00DH-0001 to: General Services Administration (88RD-9) Centralized Mailing Lists Services 819 Taylor Street P.O. Box 17077 Ft. Worth, TX 76102-0077 (817) 334-4040	Free to Federal users	Provides instructions and standardized forms for government agencies and contractors in reporting discrepancies	For internal reference and to provide pertinent info in contract specifications when use of GSA, VA, or DOD sources are authorized
7. UNICOR, Federal Prison Industries, Full Line Catalog	Federal Prison Industries, Inc. 320 First Street, NW Washington, D.C. 20534 (202) 724-3142	Free to Federal users	Provides schedule of products and ordering information	to use existing Government sources when appropriate
8. Procurement List from the Committee for Purchase from the Blind and Other Severely Handicapped	Submit GSA Form 457 specifying Free to Federal mailing list code 05SC-0002 to: General Services Administration Centralized Mailing Lists Services 819 Taylor Street P.O. Box 17077 Ft. Worth, TX 76102-0077 (817) 334-4040	Free to Federal users	Contains item descriptions and alphabetical list of commodities and services provided by workshops for the blind and other severely handicapped	to use existing Government sources when appropriate
9. New Item Introductory Schedule	Submit GSA Form 457 specifying Free to Federal mailing list code 00SC-0001 to: General Services Administration Centralized Mailing Lists Services 819 Taylor Street P.O. Box 17077 Ft. Worth, TX 76102-0077 (817) 334-4040	Free to Federal users	Contains descriptions of new or improved items not available through other GSA procurement programs, but being evaluated for long term inclusion in those programs	to use existing Government sources when appropriate
10. Federal Register	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3238	\$340 annually	Provides regulations and legal notices issued by federal agencies to the public	Consult individual issues for updated information on the Code of Federal Regulations (CFR)

Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library (continued)

<u>Title</u>	<u>Source</u>	<u>Cost</u>	<u>Description</u>	<u>Availability</u>
11. U.S. Government Manual	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3238	\$20.00	Provides names, addresses, phone numbers, key officials, background information and mission objectives of main organizational components of Government agencies	
12. MIL-I 45208, Inspection System Requirements	U.S. Naval Publications and Forms Center Attn: NP00S 5801 Tabor Avenue Philadelphia, PA 19120 (215) 697-2667	Free to Federal users	Provides specification for contractor's quality control system	Reference when used in USPS specs to check for ambiguities between it and other solicitation requirements
13. MIL-STD-105, Sampling Procedures and Tables for Inspection by Attributes	U.S. Naval Publications and Forms Center Attn: NP00S 5801 Tabor Avenue Philadelphia, PA 19120 (215) 697-2667	Free to Federal users	Provides sampling techniques for quality assurance	Use as a supplement to USPS Handbook AS-706
14. MIL-Q-9858, Quality Program Requirement	U.S. Naval Publications and Forms Center Attn: NP00S 5801 Tabor Avenue Philadelphia, PA 19120 (215) 697-2667	Free to Federal users	Provides specification for contractor quality program and inspection system	Reference when used in USPS specs to check for ambiguities between it and other solicitation requirements
15. MIL-STD-45662, Calibration System Requirements	U.S. Naval Publications and Forms Center Attn: NP00S 5801 Tabor Avenue Philadelphia, PA 19120 (215) 697-2667	Free to federal users	Provides specifications for contractors to use in certain quantitative measurements	Reference when used in USPS specs to check for ambiguities between it and other solicitation requirements
16. Armed Services Pricing Manual, Volumes I and II	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3238	Vol. I: \$17.00 Vol. II: \$11.00	Detailed guidance and theory on cost and price analysis	Use as a supplement to the PM and PH
17. Service Contract Act Directory of Occupations	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3238	\$7.00	Provides commonly used job titles and descriptions as Department of Labor Standards	To expedite processing, use in filling out SF 98, Notice of Intention to Make a Service Contract, and Response to Notice

Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library (continued)

<u>Title</u>	<u>Source</u>	<u>Cost</u>	<u>Description</u>	<u>Applicability</u>
18. Treasury Department Circular #570	US Department of Treasury Financial Management Section Surety Bond Branch 401 14th Street, SW 2nd Floor, W. Washington, D. C. 20227	Free to Federal users	Corporate surety listing acceptable for Federal bonds	Use when appropriate
19. OMB Circulars - OMB Circular A-21, Cost Principles for Educational Institutions - OMB Circular A-87, Cost principles applicable to grants and contracts with state and local Governments - OMB Circular A-88, Indirect Cost Rates, Audit and Audit Follow-Up at Educational Institutions - OMB Circular A-102 Uniform Requirements for grants-in-aid to state and local Government - OMB Circular A-110, Uniform Administrative requirements for grants and agreements with institutions of higher education, hospitals and other nonprofit organizations. - OMB Circular A-122, Cost Principles for Nonprofit Organizations	EOP Publications Services Room 2200 NEOB 726 Jackson Place, NW Washington, DC 20503 (202) 395-7332	Free to Federal users	Broad Federal guidelines issued by the Office of Management and Budget, Executive Office of the President	Reference as necessary

Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library (continued)

<u>Title</u>	<u>Source</u>	<u>Cost</u>	<u>Description</u>	<u>Applicability</u>
20. Legal Codes: - 15 Code of Federal Regulations (CFR), Business Credit and Assistance	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3236	\$20.00	Provides Small Business Administration, Economic Development Administration, and Regional Action Planning Commissions programs and procedures	Use as a supplement to the PH and PH for more detailed information on specific problems and issues
- 29 CFR, Labor (8 volumes)	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402 (202) 783-3236	Vol. I-\$16.00 Vol. II-\$7.00 Vol. III-\$24.00 Vol. IV-\$10.00 Vol. V-\$28.00 Vol. VI-\$6.50 Vol. VII-\$10.00 Vol. VIII-\$23.00	Provides Department of Labor programs and procedures	Use as a supplement to the PH and PH for more detailed information on specific problems and issues
- 39 CFR, Postal Service	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3236	\$13	Sets forth the code of Federal regulations for the Postal Service	Reference as necessary
- 41 CFR, Chapters 1-100, Part 50 (Walsh-Healey), Part 60 (Equal Employment Opportunity)	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3236	\$10	Sets forth the code of Federal regulations for the Walsh-Healey Act (Part 50) and Equal Employment Opportunity (Part 60)	Reference as necessary
- 48 CFR, Federal Acquisition Regulation System Chapter 1, Pt. 1-51 Chapter 1, Pt. 52-99	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3236	Pt. 1-51-\$26 Pt. 52-99-\$16	Sets forth the code of the Federal Acquisition Regulation System	Reference as necessary
21. Firms in the 8(a) Business Development Program	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3236	\$19.00	Provides listing by state of certified 8(a) businesses	Use to enhance participation of minority businesses in Postal Service procurements
22. U.S. Government Style Manual	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3236	\$15	Provides procedural guidance on government style sentence structure, punctuation, etc.	Reference as necessary

Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library (continued)

<u>Title</u>	<u>Source</u>	<u>Cost</u>	<u>Description</u>	<u>Applicability</u>
23. Area Trends in Employment and Unemployment	Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402-9325 (202) 783-3238	\$30 (annually) \$2.75 (monthly)	Provides up-to-date information on labor surplus areas	Reference as necessary

Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library (continued)

PUBLICATIONS OF SOURCES OUTSIDE THE GOVERNMENT				
Title	Source	Cost	Description	Applicability
1. Government Contracts Reporter (10 Volumes)	Commerce Clearing House, Inc. 4025 W. Patterson Ave. Chicago, IL 60646 (312) 583-8500	\$1,320.00	Provides statutory and Executive Order information; other Federal Government contracting information including: Federal Acquisition Regulation with many agency supplements, Comptroller General and contract appeal board decisions	Use as a reference to back-up business decisions as necessary
2. Federal Contracts Report	Bureau of National Affairs, Inc. 1231 25th St., N.W. Washington, DC 20037 (202) 452-4200	\$676 annually	A weekly newsletter covering all procurement-related concerns. New legislation and regulation affecting procurement are published at the end of the newsletter as well as briefs on recent board and GAO decisions.	Read to be aware of current professional issues and upcoming changes that would effect Postal Service procurement
3. The Government* Contractor, Briefing Papers	Federal Publications, Inc. 1120 20th St., N.W. Washington, DC 20036 (202) 337-7000	\$392 annually	A compilation of short procurement-related discussion papers	Use to keep current and enhance professionalism
4. The Mash & Cibinic* Report	Kaiser Publications 2828 Pennsylvania Ave. Washington, DC 20007 (202) 337-1000	\$440 annually	A compilation of short procurement-related discussion papers	Use to keep current and enhance professionalism
5. Thomas Register of American Manufacturers (21 Volumes)	Thomas Publishing Company One Penn Plaza New York, NY 10119 (212) 290-7277	\$195	Identifies commercially available items and services and the companies that provide them. Oriented toward industrial commodity manufacturers.	Use for market research and source identification
6. Mac Rae's Blue Book (3 Volumes)	MacRae's Industrial Directories 817 Broadway New York, NY 10003 (212) 673-4700	\$125	Accesses over 48,000 American manufacturers, products, terms, prices, leads and prospects.	Use for market research and source identification

*Service Center and Above only

Exhibit 2 for PH 2.1.2-I, Guidelines
Suggested Publications for Your Library (continued)

<u>Title</u>	<u>Source</u>	<u>Cost</u>	<u>Description</u>	<u>Applicability</u>
7. Sweets Catalog	McGraw Hill Publishing Co. Sweets Division 1221 Avenue of the Americas New York, NY 10020 (212) 512-4450	\$176.50 (eligibility requirements: application must be completed indicating type, number, and dollar amount of applicable projects)	(Construction/Architect and Engineering) Manufacturers information and advertisements.	Use for market research and source identification
8. Government Computer News	Government Computer News 1620 Elton Road Silver Spring, MD 20903 (301) 445-4405	free to federal users	Articles and advertisements related to the computer industry.	Use for market research and source identification
9. Try Us	National Minority Business Campaign 65 22nd Avenue, N. E. Minneapolis, MN 55418-3347 (612) 781-6619	\$35.00	A source directory for minority businesses that is updated annually.	Use for market research and source identification
10. Guide to Obtaining Directories	National Minority Business Campaign 65 22nd Avenue, N. E. Minneapolis, MN 55418-3347 (612) 781-6619	\$2.00	A source guide for other minority business directories.	Use for market research and source identification
11. Administration of Government Contracts 2nd Edition Meeh & Cibinic	George Washington University Government Contracts Program 801 22nd Street, N. W. Suite T-412 Washington, D. C. 20052	\$30	Text book covering substantive issues that most frequently arise between the parties during performance of government contracts.	General guidance on Government contract law
12. Formation of Government Contracts 2nd Edition Meeh & Cibinic	George Washington University Government Contracts Program 801 22nd Street, N. W. Suite T-412 Washington, D. C. 20052	\$30	Text book covering the basic principles governing the formation of Government contracts.	General guidance on Government contract law
13. Cost Reimbursement Contracting 2nd Edition Meeh & Cibinic	George Washington University Government Contracts Program 801 22nd Street, N. W. Suite T-412	\$25	Text book covering both formation and administration of cost reimbursement contracts.	Use for guidance on cost reimbursement contracting

Checklist for PH 2.1.4, Developing Individual Plans
What Should be Considered in Preparing an Individual Plan?

WHAT SHOULD BE CONSIDERED IN PREPARING AN INDIVIDUAL PLAN?

Requirement Impacts/Considerations

1. Why is the purchase necessary? Precisely what contribution is it expected to make?
2. What is the scope of the requirement and what precisely must a contractor do to meet it? How can the requirement best be specified or stated?
3. What discussions with technical or operations personnel may be necessary to determine technical approaches, possible difficulties, state of the art, and the like?
4. How is this contract effort meant to interface with other contract or inhouse efforts?
5. What experience with previous contract efforts is relevant to the present effort?

Timing Impacts/Considerations

1. How long will it take for purchasing personnel to perform necessary steps leading to contract award? (The length of time needed can vary widely depending on the nature of the procurement (competitive versus noncompetitive.)
2. What period of time will the contractor need to deliver items or perform services?
3. What specific performance milestones or key deliverables should be scheduled during the life of the contract?
4. Is there time in the schedule to deal with presently unknown problems? Can the schedule slip or is timely delivery essential?

Funding Impacts/Considerations

1. How much can the effort or product be expected to cost?
2. Have sufficient funds been budgeted?
3. Will the effort be funded in full or in increments? (If multiyear, although not fully funded, Postal Service is obligated to pay the contractor as funds become available.)

Checklist for PH 2.1.4, Developing Individual Plans

What Should be Considered in Preparing an Individual Plan? (continued)

Market Condition Impacts/Considerations

1. Is the market highly competitive? Are there many sources?
2. What are the manufacturing lead times?
3. What are economic order quantities?
4. Are there tooling requirements? Must the Postal Service furnish tooling? If so, what is its condition?
5. Are suppliers generally price conscious?

Approval Impacts/Considerations

1. Is it necessary to request any reviews and approvals or clearances before submitting the purchase request to the purchasing office?
2. Will purchasing personnel need to obtain other reviews before going forward with the procurement action?
3. How much time must be allowed for these reviews?

Source Solicitation and Evaluation Impacts/Considerations

1. Should the purchase be publicized in publications other than the *Commerce Business Daily* (CBD)?
2. Are there any sources, known to be qualified, who should receive solicitations?
3. What plans for evaluation of offers or technical proposals must be made? What specific evaluation criteria are needed? What is their relative weight? How will the technical evaluation panel be structured? Will qualified evaluators be available?
4. Can this contract be reserved for minority business enterprises?

Contract Performance and Administrative Impacts/Considerations

1. What management control or quality assurance tools—such as performance or product standards, tests, inspection procedures, contractor reports—are needed?
2. What contract type and compensation method would be most appropriate for this contract effort?

Checklist for PH 2.1.4, Developing Individual Plans

What Should be Considered in Preparing an Individual Plan? (continued)

The contracting officer is responsible for determining contract type and payment provisions. However, review (approval) is required regarding Progress and Advance Payments. In some situations, however, operations or technical personnel may have cause to recommend that certain arrangements be used.

3. Are there special software, data, or patent issues?

Purchase Request Preparation Impacts/Considerations

1. Whose contribution will be required in preparing the purchase request, and who will have overall responsibility for its preparation and submission?
2. How long will it take to prepare the work statement or specification and all other elements of the purchase request?

As you can conclude from the above listed questions, many of the answers required to help you in the planning process must be generated from sources outside the Procurement and Supply Department. Close working relationships with other Departments and disciplines must be developed to enable you to properly discharge your procurement responsibilities. It is vital that communications between disciplines be active and open. You must make yourself accessible to technical personnel. The earlier you become involved in the planning process, the more knowledgeable and effective you will be as a procurement specialist or contracting officer. This includes interfacing with those activities that may have primary responsibility for some aspects of the planning (such as the project manager) before the release of the requisition.

Outline for PH 2.1.4, Developing Individual Plans
Individual Plan Outline

INDIVIDUAL PLAN OUTLINE

I. Description of Requirement

- a. Summary of required items (including data items and attendant rights) services and performance requirements.
- b. Options
 - Description
 - Rationale
- c. Component breakout (summary and rationale)
- d. Purchase history
 - Previous procurements, if any
 - Problems, if any

II. Estimated Cost

- a. Preparer of cost estimate
- b. Basis for calculation (e.g., budget, DAR, catalog, market survey, etc.)
- c. Board of Governors, CIC approval
- d. Availability of funds

III. Delivery and Installation Requirements

- a. Description
- b. Basis for delivery and installation requirements, including explanation of any urgency
- c. Reasonableness of delivery and installation requirements in terms of industry norms and if unusual, likely effect on procurement (e.g., risk, higher cost, etc.)

IV. Procurement Approach

- a. Specification
 - Type (functional, technical, brand name or equal, etc.)
 - Preparer
 - Previous use and adequacy
 - Procurement Technical Division review

Outline for PH 2.1.4, Developing Individual Plans
Individual Plan Outline (continued)

- b. Expectation of competition
 - Extent of expected competition, including any special considerations which may limit competition
 - Known sources (list or reference previous offerors and provide number of potential offers)
 - Steps to be taken to enhance competition (example, preproposal conference)
 - If single source, provide justification and plans for ensuring competition in the future
- c. Method of procurement (standard, simplified, research announcement, etc.)
- d. Plans for CBD synopsis (if procurement will not be synopsized, provide reason)
- e. Proposal Evaluation
 - Technical (include method, responsibility for technical evaluation, and, on major projects, detailed plans for managing the evaluation effort)
 - Benchmark, functional demonstration, etc.
 - Cost evaluation (including method and responsibility)
- f. Method of Selection
 - Price
 - Technical
 - Other (Source Selection Committee for example)
- g. Type of contract (with rationale)
- h. Reasonableness of Price
 - Explanation of method(s) for ensuring reasonableness of price:
 - Adequate price competition
 - Catalog or market prices (include verification method)
 - Price analysis (total price only; cost and profit not evaluated separately)
 - Cost analysis (elements of cost evaluated separately; may employ price analysis on individual elements)
 - Support (audit, etc.)
- i. Data rights (approach, alternatives considered, and rationale)
 - Rights in technical data
 - Software
 - Other intellectual property

Outline for PH 2.1.4, Developing Individual Plans
Individual Plan Outline (continued)

- j. Patent considerations
- k. Statutory considerations
 - Service Contracts Act
 - Equal Employment Opportunity (EEO) Compliance
 - Other (as appropriate)
- l. Milestone schedule (through contract completion)
- m. Responsibility determination
 - Methods for determining financial and technical capability to ensure performance. Describe key factors to be assessed (e.g. financial, production schedule, etc.) and responsibility for assessment
- V. Contract Management
 - a. Inspection and acceptance (Quality Assurance)
 - First article (include description, contractor testing or Postal Service testing)
 - Performance test (extent, required performance level)
 - Responsibility for inspection and acceptance
 - b. Project management (requiring activity)
 - Identification
 - Responsibilities
 - c. Receiving report process
 - d. Payment process
 - Billing address
 - Certification responsibility
 - Type (include rationale)
 - Completion
 - Partial
 - Progress (include management)
 - Advance
 - Audit involvement
 - e. Warranties
 - Description
 - Rationale

Outline for PH 2.1.4, Developing Individual Plans
Individual Plan Outline (continued)

- f. Liquidated damages
 - Rationale
 - Basis
 - g. Logistic support
 - Contractor maintenance
 - Spares (include management and control)
 - h. Contractor reports
- VI. Special Risks (include actions taken to minimize)
- a. Technical
 - b. Cost
 - c. Schedule
- VII. Other (include considerations such as deviations from policy requirements)

Format for PH 2.1.5, Coordinating Implementation Actions
Format for Implementation Plan

FORMAT FOR IMPLEMENTATION PLAN

Event	✓	Responsibility	Scheduled	Completed
1. Market Survey (2.1.2)	_____	_____	_____	_____
2. Wage Rate Determination and Request	_____	_____	_____	_____
3. Presolicitation Notice	_____	_____	_____	_____
4. Source Pre-qualification	_____	_____	_____	_____
5. Deviation Approvals (1.4.2)	_____	_____	_____	_____
6. Publicizing (CBD Notice)	_____	_____	_____	_____
7. Complete solicitation documents	_____	_____	_____	_____
8. Requiring Activity Adequacy Certification	_____	_____	_____	_____
9. Presolicitation Legal Review and Approval	_____	_____	_____	_____
10. Presolicitation Higher Level Review and Approval	_____	_____	_____	_____
11. Solicitation Issuance	_____	_____	_____	_____
12. Preproposal Conference	_____	_____	_____	_____
13. Amendments	_____	_____	_____	_____
14. Receipt of Offers	_____	_____	_____	_____
15. Evaluation	_____	_____	_____	_____
a. Technical	_____	_____	_____	_____
b. Cost	_____	_____	_____	_____
16. Negotiations (Includes preparation of the Pre-Negotiation Plan)	_____	_____	_____	_____

Format for PH 2.1.5, Coordinating Implementation Actions
Format for Implementation Plan (continued)

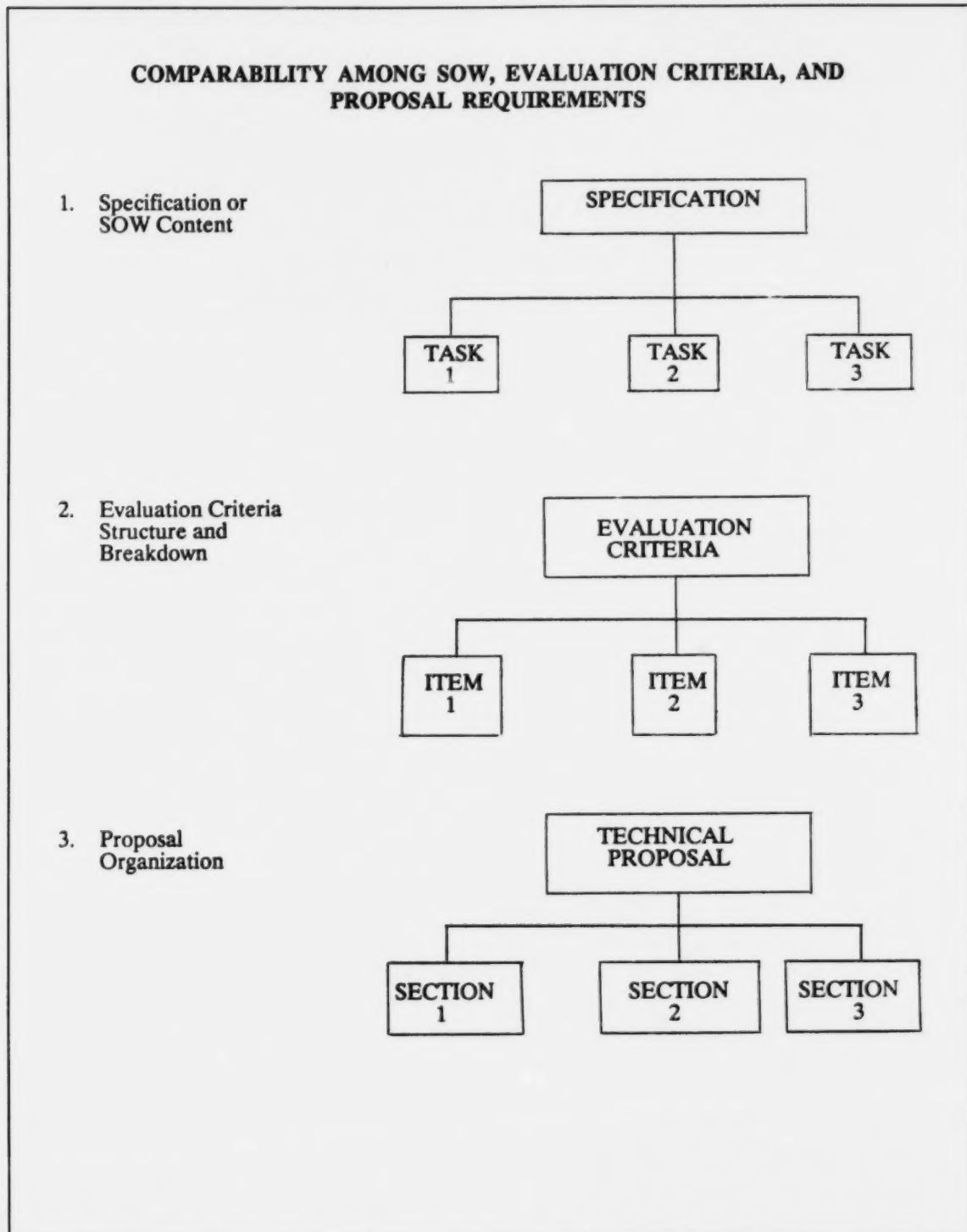
	✓	Responsibility	Scheduled	Completed
17. Transportation Evaluation	_____	_____	_____	_____
18. Price and Cost Analysis	_____	_____	_____	_____
19. Pre-award Survey	_____	_____	_____	_____
20. Responsibility Determination (Bond Request)	_____	_____	_____	_____
21. Requirements Reverification	_____	_____	_____	_____
22. Legal Review and Approval	_____	_____	_____	_____
23. Higher Level Review and Approval	_____	_____	_____	_____
24. Award Date	_____	_____	_____	_____

Matrix 1 for PH 2.1.6-VII, Guidance on Evaluation Criteria
Subject Areas and Assessment Criteria

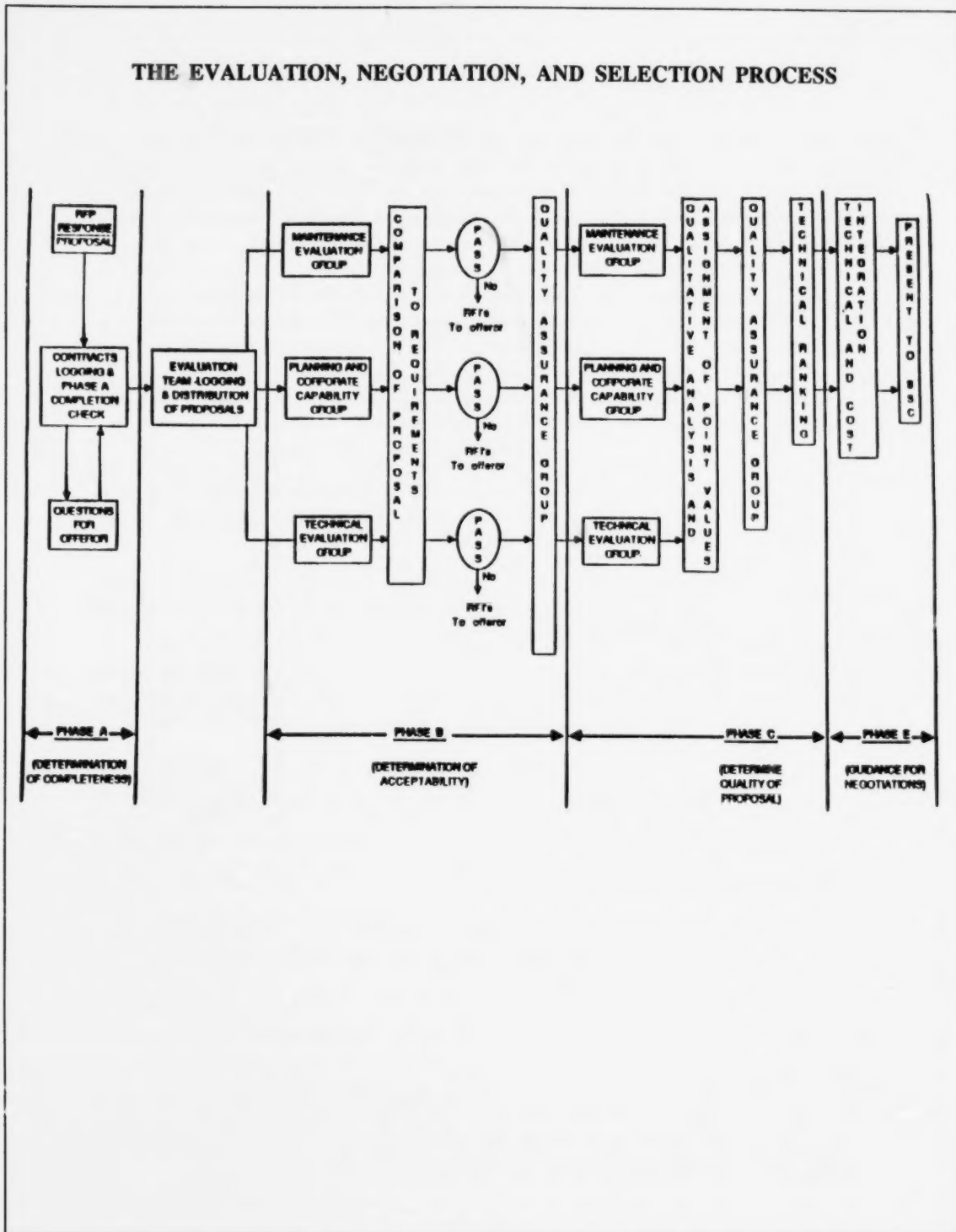
SUBJECT AREAS AND ASSESSMENT CRITERIA

Assessment Criteria	Technical	Management	Assessment Criteria
Soundness of Approach	1	3	Adequacy of Resources
		4	Adequacy of Experience
Compliance with Requirements	2	5	Satisfactory Past Performance

Matrix 2 for PH 2.1.6-VII, Guidance on Evaluation Criteria
Comparability Among SOW, Evaluation Criteria, and Proposal Requirements



Flow Diagram for PH 2.1.6-VII, Guidance on Evaluation Criteria
The Evaluation, Negotiation, and Selection Process



Checklist for PH 2.1.6-VII, Guideline on Evaluation Criteria (2.1.6.a)

General Information to Request for Price Proposals

GENERAL INFORMATION TO REQUEST FOR PRICE PROPOSALS

You will have a very detailed set of informational needs for each price proposal that you request, based on the unique aspects of each proposal; however, some general considerations may apply. Use the following checklist to ensure inclusion of those that do apply, in addition to more specific requirements.

**Appropriate
For Inclusion**

- _____ 1. Have you asked whether the proposal is consistent with the offeror's established estimating and accounting practices and procedures and with PM Chapter 5?
- _____ 2. Have you asked whether the offeror has been awarded any contracts or subcontracts for the same or similar supplies or services within the last three years (or other time frame) and what the specifics of those contracts were?
- _____ 3. If the price may be based on a catalog or market price, have you asked for the source and date or effective period of the catalog or other basis for market price?
- _____ 4. If the price may be based on a catalog or market price, have you asked for a listing of the discounts that apply against the basic list price?
- _____ 5. If the price may be based on a catalog or market price, have you asked for a percentage or unit volume breakdown of total sales to show the amount of (a) Postal Service sales, (b) other Government sales, (c) sales at catalog price to the general public, and (d) other sales to the general public?
- _____ 6. If there is price regulation within the industry, have you asked for the identification of any law or regulation that establishes the price offered?
- _____ 7. If you will need to rely on cost analysis in addition to price analysis, have you specified a format for a cost breakdown?
- _____ 8. Is the format in #7 above consistent with the format used for the Postal Service estimate (a comparison of basic elements will be useful for discussions and negotiations as well as for a determination of price reasonableness)?

2.2 Planning Considerations**2.2.1 Quality Requirements****I. Quality Assurance and Inspection****Quality Assurance Methods**

Quality assurance is a broad term that encompasses final inspection before acceptance as well as all the inspection and monitoring activities that take place during contract performance. The Procurement Technical Division (PTD) of the Procurement and Supply Department is generally responsible for conducting all or a portion of the quality assurance functions related to a contract; however, in some instances, other personnel within the Postal Service, contracted services, or a Federal agency (Defense Contract Administrative Services) may perform certain quality assurance functions. The various PM inspection clauses give the Postal Service the right to make inspections or tests at any time and at any place during contract performance. To what extent the Postal Service will actually exercise its right of inspection depends on many factors including:

1. Project size and complexity.
2. Contractor integrity and reliability.
3. Adequacy of the contractor's inspection system.
4. Previous experience with the contractor.

Some form of inspection should be conducted before acceptance in all cases, unless the contracting officer decides to accept a contractor's certificate of conformance and the contract gives the Postal Service the right to reject after acceptance (in addition to the limited right to revoke provided by some inspection clauses).

Inspection Methods

The Postal Service uses several methods of inspection, including:

1. Review of written inspection and test reports submitted by the contractor.
2. Physical examination of products and services delivered before acceptance.
3. Physical and performance tests.
4. First-article approval before full production is authorized.
5. Inspection during the manufacturing process.

Practical Considerations

1. An initial inspection plan should be incorporated in individual procurement plans (see PM 2.1.4. and Procedure 2.1.4).
2. The level of inspection should be sufficient to ensure that quantity and quality requirements are met in a timely manner. Inspection requirements should be reasonable.

3. To avoid jeopardizing Postal Service remedies for noncompliance, supplies or services should not be accepted for payment unless a valid inspection has been made.

II. Reviewing Requisition Packages

The contracting officer has the primary responsibility in the procurement process of ensuring that the solicitation document and the resulting contract fairly represent the business and technical considerations of the Postal Service. You should call upon the assistance of the requisitioning activity, quality assurance, legal, financial, and other offices within the Postal Service for assistance in planning a procurement. Use the checklist for this procedure, "Considerations Affecting Solicitation Preparation," to review requisition packages, ensuring that appropriate consideration is given in the planning of each solicitation.

2.2.2 First Article Approval

Establishing Test Criteria for First Article Approval

The contracting officer is responsible for approval of first articles before production, assisted by the Quality Assurance Branch of the Procurement Technical Division. If you determine that first article tests are required in the performance of a contract, proceed as follows:

1. Determine with the requisitioning activity and the Quality Assurance Representative (QAR) the precise design or performance specifications to be evaluated during performance testing.
2. Develop with the requisitioning activity and the QAR a description of the testing routine, sequence of tests, number of units to be tested, data required, and the criteria determining conformance to specified requirements.
3. Determine whether first article tests should be performed at source, at destination, or at a third location, in accordance with PM 2.2.1.
4. Ensure that the solicitation provides potential contractors complete information on items 1, 2, and 3.
5. Require the contractor to submit an Acceptance Test Plan for approval by the Postal Service and once approved, insist on compliance.

2.2.3 Acceptance

Guidelines for Acceptance

Determining Place of Acceptance

You must determine the place of acceptance for all goods and services before issuance of the solicitation. Depending on the clauses in the contract, acceptance may be before delivery, at the time of delivery, or after delivery. Supplies and services must not be accepted before inspection unless the contract allows a Certificate of Conformance. A Certificate of Conformance is a contractor's certification that supplies or services comply with contract

requirements. Standard commercial items or supplies of a common, noncritical nature may be accepted solely on the basis of a contractor's Certificate of Conformance if you determine that one of the following applies.

1. Acceptance on the basis of a Certificate of Conformance is in the Postal Service's interest.
2. Based on the supplier's reputation or past performance, it is reasonable to expect that the supplies furnished will be acceptable and that any defective supplies will be replaced or corrected by the supplier without contest.
3. The contract:
 - a. Reserves to the Postal Service the right after acceptance to inspect the supplies within a reasonable time after delivery and to reject defective items; *and*
 - b. Imposes upon the contractor the obligation, in the event of such rejection, to promptly replace or correct the defective items at no cost to the Postal Service.

The primary issue to be addressed in determining the point of acceptance is where inspection of the product or service can best be conducted. For large bulk supply contracts, the most efficient method of inspection and acceptance is often at origin (the contractor's plant). On the other hand, equipment, computers, and installed products normally will be accepted at destination. F.o.b. points are indicators of usual places of acceptance. (The f.o.b. point indicates where the risk of loss in shipping is shifted from seller to buyer.) In rare circumstances, it might be appropriate to provide for acceptance at a location other than the f.o.b. point.

Delayed Acceptance

If you provide for delayed acceptance in a contract, your procurement plan should specify:

1. The amount of time the Postal Service needs to conduct inspection before acceptance.
2. Who will be responsible for performing the inspection and acceptance.
3. Where and how the inspection and acceptance will be accomplished.
4. What actions the contracting officer will or should take if the product or service has minor irregularities, moderate irregularities, or significant defects.

Remember that late acceptance, as opposed to delayed acceptance (see Clause 2-6 and PM 2.2.3.b), requires you to obtain consideration from the contractor.

2.2.4	Warranties
--------------	-------------------

I. Requiring Notice of Warranty

Warranted items of significant value should be marked with a notice of warranty to alert the user to the warranty rights. The potential benefits of marking must be worth the costs.

Steps

1. Determine the probable cost of requiring notices of warranty. If market research does not provide this information, require separate warranty pricing in proposals.

2. If the benefit to the Postal Service of replacing or correcting warranted items exceeds the cost, determine whether the items can be marked with a warranty notice that sufficiently will inform you when a defect occurs. For example, it may not be feasible to mark small, oddly shaped items.
3. If it is not feasible to mark the items, require the contractor to deliver with each packed item a notice containing the following language:

WARRANTY NOTICE

This product is warranted for a period of ____ year(s) from _____
against defects. If defects are found, notify

II. Planning for a Warranty Clause

Guidelines

Inclusion of a warranty clause may increase the price of the product being acquired. You must weigh carefully the benefits of asserting claims against warranties after acceptance, against the cost of inserting a warranty clause.

The following are some points to consider in your analysis of whether to include a warranty clause for a particular procurement.

1. Is the product or service a standard commercial product for which suppliers offer an industry warranty?
 - a. If the answer is yes, is the warranty sufficient? If so, use the commercial warranty.
 - b. If the answer is no, or the commercial warranty is insufficient, what factors suggest a special warranty?
2. If the product or service is not a standard commercial product, or factors suggest a special warranty, how much will warranty protection cost?
 - a. Can market research provide a reasonable approximation of the price? If not, consider requiring alternate price proposals with and without warranty.
 - b. If market research discloses a fair approximation of price, consider requiring separate pricing for warranty work and include warranty price as an evaluation factor.
 - c. Determine the cost of obtaining a service or maintenance contract instead of a warranty, from either the contractor or another source.
3. What is the nature of the damage to the Postal Service in the event of defective performance?
 - a. Is the product or service critical to a mission?

- b. If so, will time permit shipping for corrections? If not, consider use of an on-site maintenance contract.
 - c. Is the deliverable item large and complex, or is it small enough to be shipped?
 - d. What is the likelihood that a defect will require shipment back to the factory, or to a depot? Can the item be repaired on site?
4. How critical is the item for protection of Postal employees?
 - a. If the item is crucial to safety, will a warranty be more useful than a rigid inspection and acceptance system?
 - b. Will the warranty be a deterrent to deficiencies?
 5. To what extent will acceptance be based upon contractor inspection or quality control? Normally, the more dependent the Postal Service is upon contractor inspection, the more appropriate is the use of a warranty as a contractor incentive to properly and rigidly inspect.
 - a. Does the industry have a practice of using a rigid inspection system?
 - b. Would a rigorous preaward survey be adequate, instead of a warranty?
 6. Are the articles easily inspected to determine acceptability?
 - a. Are the items so complex that flaws will not be apparent upon reasonable inspection? If so, consider use of a warranty.
 - b. If inspection or acceptance tests are sufficient to assure conformance, a warranty may not be worth the extra cost.
 7. Is the item produced under a development rather than a production contract? Is it a state-of-the-art product? Normally, a contractor will not warrant products in research or under development.

III. Negotiating Exclusions in Commercial Warranties

Guidelines

In purchasing standard commercial items, you will frequently find that it is cost-effective to accept the contractor's standard commercial warranty. Most commercial warranties, however, expressly disclaim implied warranties of merchantability and fitness of purpose to reduce liability for unforeseeable circumstances. Moreover, these warranties may be limited to repair and replacement, and the contractor may charge for shipping the item back to the Postal Service.

You may wish to request the remedies procedures in Clause 2-8, *Warranty*, but relieve the contractor of implied warranties. In this case, use Clause 8-13, *Warranty Exclusion and Limitation of Damages*, as an optional clause in conjunction with the warranty clause. This is particularly useful when the industry practice is to exclude implied warranties and vendors are insistent upon the practice.

IV. Period of Warranty

Guidelines

You may require correction of defects existing at time of delivery or those that develop over a stated period of time. Normally the contractor's liability should end after delivery and acceptance under the following conditions:

1. The item is produced to Postal Service design specifications.
2. The product may be easily inspected upon delivery to determine conformance.
3. A standard trade or industry product warranty for commercial items so provides.

When one or more of these conditions are absent, specify a warranty period after delivery and acceptance that reflects:

1. The benefits of a longer warranty period compared to the costs.
2. The rate of failure within specified time periods.
3. The item's useful life.
4. The importance of the item to Postal Service's mission.

2.2.5 Delivery or Performance Schedule

I. General Requirements for Delivery

Guidelines

If adherence to a delivery schedule is a significant Postal Service objective, identify delivery capability as an important criterion for proposal evaluation in the solicitation, and weight it accordingly. The solicitation should also require the offeror to provide evidence of its ability to comply with proposed delivery schedules. At a minimum, you should request the offeror to provide information on:

1. Past delivery performance on similar items and schedules.
2. Manufacturing capacity, and current backlog which could affect delivery.
3. Offeror exceptions to terms and conditions relating to delivery, such as
 - a. "Time is of the essence" clause.
 - b. Liquidated damages clause.
 - c. Incorporation of the Uniform Commercial Code "incidental" damages.
 - d. Delivery incentives—positive and negative.
 - e. Stated delivery or performance period.

Address all factors relating to the delivery or performance schedule in procurement planning. Various contractual approaches are discussed in this and succeeding procedures, and summarized in the table for this procedure, "Matrix of Delivery and Schedule-Related Clauses," following this section.

Partial Deliveries

Partial deliveries may allow the requisitioning activity's requirements to be met while encouraging offers from contractors unable to respond to a requirement for a single large delivery. You may authorize partial deliveries if they meet the requisitioning activity's needs and do not unnecessarily increase administrative costs. Specify a time for partial deliveries in the schedule.

II. F.o.b. Points (2.2.5.e)

F.o.b. stands for "free on board." This legal term denotes the point at which title to, and risk for, a shipment shifts from the seller to the buyer. If the delivery terms are "f.o.b. origin," the buyer assumes liability at the point from which the article is to be shipped, and usually pays the shipping costs. If the terms are "f.o.b. destination," the seller is responsible for cost of shipping and the condition of the shipment until it is delivered to the buyer. Clause 2-9 defines shipment and delivery points, and outlines the contractor's responsibilities for f.o.b. origin and f.o.b. destination shipments.

The choice of an f.o.b. point should depend on the planned place of acceptance (see PM and PH 2.2.3) and the costs of insurance and shipping.

III. Delivery Incentives

You should consider providing schedule incentives when early delivery is a major performance objective. The importance of meeting a delivery schedule varies widely among contracts. When providing delivery incentives, specify the positive and negative sides of the incentive structure. Encouraging the contractor to make early deliveries lessens the possibility of late delivery problems.

Delivery incentives are generally more appropriate in a fixed-price rather than a cost-reimbursement contract. The degree of difficulty in controlling the schedule (that is, the likelihood of such things as equitable adjustment that would involve schedule changes as well as cost) should also be taken into account in your decision. Schedule incentives may be used either alone or in conjunction with other contract provisions which are related to schedule performance.

The following example shows appropriate use of a schedule incentive.

Example: The Postal Service *must have* delivery of a PSDS/FDRS system at the Wilkes-Barre Postal Data Center on or before January 15, 19xx. This date is critical because several field offices must establish a data link with the new equipment by February 1, and there is only a two-week debugging period. Every day the targeted date of January 15 can be improved is of value to the Postal Service. The contract is a firm-fixed-price contract with a value of \$10 million. The delivery objective of January 15 is 18 months after award.

Schedule Incentives:

Positive = +\$5,000 per day, not to exceed a total ceiling of \$100,000

Negative = -\$5,000 per day, not to exceed a total ceiling of \$100,000

A contractor will receive an extra \$5,000 per day for delivery before January 15, for up to 20 days (\$5,000 x 20 = \$100,000). Conversely, the Postal Service will deduct \$5,000 per day for each additional day that a contractor is late, up to the 20th day after the contract delivery date. (You will seek other contractual remedies after the 20th day.)

Note that the use of schedule incentives does not replace the remedies for late delivery provided for in the termination for default provision of the contract (Clause B-12 or B-13) nor does it automatically replace the liquidated damages provision (Clause 2-10).

2.2.6	Liquidated Damages
-------	--------------------

Planning for Liquidated Damages

Making A Determination on Liquidated Damages

You may not include a liquidated damage clause simply to penalize poor performance. The objective is not to reduce the contract price, but to compensate the Postal Service for anticipated loss or disruption (see PM 2.2.5.b). Determine what damages the Postal Service will suffer because of contractor delay. The damages must be substantial. If you determine that a substantial loss will be incurred, weigh that loss against the probable increase in contract price resulting from the offeror's "padding" the offer to cover that contingency.

Some of the circumstances under which liquidated damages provisions should be included in a contract are as follows:

1. *Delay will impede another contractor's efforts.* For example, if the contract is for site preparation for installation of a computer system by another contractor, and timely delivery of the computer system is critical to the Postal Service functions, liquidated damages may be appropriate.
2. *Failure to make timely delivery will result in added operational expenses.* You may determine, for example, that the delivery of sophisticated mail handling equipment will result in significant cost savings through increased efficiency and labor costs. You could base damages on cost savings the Postal Service misses because of late delivery.
3. *Timely delivery of the supplies or services ordered is critical to a Postal Service function or mission.* A late delivery of a replacement computer system for payroll applications is a prime example. You might be able to base damages on the cost of using a commercial firm's services to meet the payroll.

If you determine through market research that liquidated damages are not an industry standard, you may want to request a contractor to offer prices with and without a liquidated

damages clause to ensure that you will get a good response to the solicitation. If responses indicate a wide disparity of prices due to liquidated damages, you must determine whether the added cost is worth the recovery of possible damages.

Steps

1. If you determine that a provision for liquidated damages is appropriate, select either Clause 2-10 or Clause 8-8, modified as necessary.
2. Calculate liquidated damages based on a reasonable estimate of the cost of each day's delay. Limit the number of days for which liquidated damages may be assessed so as not to impose a penalty. For example, your analysis may show the anticipated cost savings from installation of new equipment. The cost savings foregone each day may be used as the basis for the daily rate, and you may add the approximate costs of any additional inspection required. Your analysis must be documented in the contract file.

2.2.8 Options

Including Options Clauses in Contracts

The Postal Service has the ability to enter into multiyear contracts without encountering the obstacles traditionally placed in the way of Federal agencies. Options clauses, therefore, have limited uses in Postal Service contracts.

In firm fixed-price contracts, solicit option prices and consider them in evaluation for award if both of the following conditions are met:

1. There is a known requirement that exceeds the basic quantity to be awarded, but:
 - a. The basic quantity is a learning or testing quantity (that is, the Postal Service is not sure of the suitability of the product), or there is some uncertainty as to contractor or equipment performance, making multiyear procurement inappropriate; or
 - b. There is some uncertainty that funds will be available to purchase future years' needs.
2. Realistic competition for option quantity is impractical once the initial contract is awarded.

Checklist for PH 2.2.1-II, Reviewing Requisition Packages
Considerations Affecting Solicitation Preparation

CONSIDERATIONS AFFECTING SOLICITATION PREPARATION

Place a check mark by each consideration as you review your requisition package and planning documents to indicate that you are satisfied that the documents you are reviewing adequately address that consideration.

<u>Considered</u>	<u>General Considerations</u>	<u>PM Citation</u>
_____	1. Is the appropriate type of specification or product description being used?	2.3
_____	2. Have the appropriate supply sources been selected?	3.1.1
_____	3. Has the appropriate method of publicizing purchase action been selected?	3.2
_____	4. What is the appropriate purchasing method for this procurement (simplified, competitive, noncompetitive, special)?	4
_____	5. Has the appropriate contract type been selected?	5.1.2
_____	6. Does the procurement include Privacy Act issues?	1.7.4
_____	7. What requirements need to be addressed on the acquisition and use of patents?	9.2
_____	8. What issues need to be addressed on the acquisition and use of data rights for technical data, computer software, special works, or existing works?	9.3
_____	9. Have insurance requirements been considered (liability, workmen's compensation)?	7.2
<u>Special Considerations</u>		
_____	1. Does this procurement require the use of Postal Service property?	2.2.7

Checklist for PH 2.2.1-II, Reviewing Requisition Packages
Considerations Affecting Solicitation Preparation (continued)

<u>Considered</u>		<u>PM Citation</u>
_____	2. Will this procurement require special tooling and test equipment to be furnished by the Postal Service?	2.2.7
_____	3. Does, or should, this procurement use options?	2.2.8
_____	4. Will the procurement require monitoring subcontracting efforts?	6.7.1
_____	5. Does the procurement require site preparation by the Postal Service? Has this issue been addressed in the solicitation?	8.3.4
_____	6. Is a letter contract necessary to acquire the goods or services in a timely manner?	5.1.7
_____	7. Is there a potential for organizational conflict of interest for current, past, or future contracts by potential offerors?	8.4.8
_____	8. Have conflict of interest, nondisclosure, and key personnel issues been addressed?	8.2.1
<u>Quality Assurance/Acceptance Considerations</u>		
_____	1. Are quality requirements addressed adequately?	2.2.1
_____	2. Is a first-article approval appropriate?	2.2.2
_____	3. Where and when is acceptance to take place?	2.2.3
_____	4. What warranties, if any, are required?	2.2.4
_____	5. Is the delivery or performance schedule clear and reasonable?	2.2.5
_____	6. Have appropriate inspecting and testing requirements been developed for inclusion in the solicitation?	6.3.1

Checklist for PH 2.2.1-II, Reviewing Requisition Packages
Considerations Affecting Solicitation Preparation (continued)

<u>Considered</u>		<u>PM Citation</u>
<u>Fiscal-Related Considerations</u>		
_____	1. Are liquidated damages appropriate for this procurement?	2.2.6
_____	2. Is this procurement suitable for multiyear procurement?	2.2.9
_____	3. Will a limitation of funds or limitation of cost provision be necessary?	5.1.4
_____	4. What provisions have been made for payment?	6.4
_____	5. Should bonds be a requirement of this procurement (payment, performance, other)?	7.1
_____	6. Are there tax issues that need to be considered?	7.3
<u>Socioeconomic Considerations</u>		
_____	1. Is this procurement suitable for minority-owned businesses to participate in the competition?	10.1
_____	2. Have the appropriate labor policies been considered in the solicitation?	10.2
_____	3. Has consideration been given to the Postal Service's preference for domestic source products?	10.3

Table for PH 2.2.5-I, General Requirements for Delivery
Matrix of Delivery and Schedule Related Clauses

MATRIX OF DELIVERY AND SCHEDULE RELATED CLAUSES

PM Clause	Title	Relevance To Schedule and Delivery
B-2	<i>Changes</i>	The contracting officer may order changes within the general scope of the contract in "delivery or performance schedule." This will result in an equitable adjustment.
B-7	<i>Responsibility for Supplies</i>	The contractor is responsible for supplies until delivered at the designated delivery point, regardless of point of inspection.
B-11	<i>Termination for Convenience</i>	The contracting officer can terminate the contractor for default if a schedule or delivery date is missed (excusable delays are excepted). A contracting officer may terminate all or any portion of a contract at any time for convenience but the contractor is entitled to termination costs when terminated for convenience.
B-12	<i>Termination for Convenience or Default</i>	
B-13	<i>Termination for Default</i>	
B-15	<i>Notice of Delay</i>	The contractor must notify the contracting officer if deliveries are in jeopardy - why they are - and for what period of delay. Failure to do this could preclude any later consideration by the contracting officer of a request for time extension.
B-16	<i>Suspensions and Delays</i>	Failure of the contracting officer to take actions required of USPS under the contract in a timely fashion could result in costs to USPS if it is determined that the failure to act amounts to a suspension or delay of the contractor's performance.
B-19	<i>Excusable Delays</i>	Failure to deliver on the part of the contractor may be excusable under this clause.
B-20	<i>Invoices</i>	Contractor certifies that any supplies for which invoices have been submitted have been shipped or delivered per contract terms. False certification is a criminal offense.
B-23	<i>Guaranteed Shipping Weight</i>	Even if the contractor makes timely deliveries, it is liable for excess costs if those shipments exceed the shipping weight limitations in the contract.
1-3	<i>Progress Payments</i>	The contracting officer may reduce or suspend payments if the contractor fails to make progress. This includes preparation for delivery and/or missed delivery dates.

Table for PH 2.2.5-I, General Requirements for Delivery
Matrix of Delivery and Schedule Related Clauses (continued)

2-1	<i>Inspection - Fixed-Price</i>	The Postal Service has the right to inspect supplies anywhere at any time. This right, if exercised, can provide early visibility into potential contractor delinquencies.
2-2	<i>Inspection - Non-Fixed-Price</i>	
<u>PM Clause</u>	<u>Title</u>	<u>Relevance To Schedule and Delivery</u>
2-4	<i>First Article Approval - Contractor Testing</i>	The contracting officer must approve, disapprove, or conditionally approve the first article. This action could significantly impact the delivery schedule. The contractor bears responsibility and costs for a disapproved first article.
2-5	<i>First Article Approval - Postal Service Testing</i>	
2-6	<i>Delayed Acceptance</i>	This provision permits the contractor to deliver supplies without acceptance. Acceptance occurs after implementation of an acceptance test program. This special test program is used primarily with computer and telecommunications equipment, mail handling equipment and building systems.
2-7	<i>Incorporation of Warranty</i>	It is vital to establish when the warranty period begins (that is, at delivery, at acceptance, at the time the Postal Service introduces the equipment into operational service).
2-8	<i>Warranty</i>	
2-9	<i>Designation of Delivery Terms and Contractor's Responsibilities</i>	This provision establishes the definitional ground rules for delivery.
2-10	<i>Liquidated Damages</i>	The Postal Service has the right to charge the contractor liquidated damages (in lieu of actual damages) if the contractor fails to deliver supplies in accordance with the contract.
2-11	<i>Postal Service Property:</i>	Failure of the Postal Service to deliver Postal Service property to the contractor in a timely manner could allow the contractor to request adjustment of the delivery schedule and/or price under the <i>Changes</i> clauses.
2-12	<i>- Fixed Price</i>	
2-13	<i>- Short Form</i>	
2-14	<i>- Non-Fixed Price</i>	
2-14	<i>- Furnished "As Is"</i>	
5-2	<i>Incentive Price Revision</i>	If there is a schedule incentive in the contract, the appropriate incentive clause must be included. The incentive clause will identify cost incentives associated with delivery.
5-9	<i>Incentive Fee</i>	
5-11	<i>Ordering</i>	These contract clauses relate to the rights and obligations of the parties regarding delivery and the quantities of supplies or services to be delivered.
5-12	<i>Delivery-Order Limitation</i>	
5-13	<i>Definite Quantity</i>	
5-14	<i>Indefinite Quantity</i>	
5-15	<i>Requirements</i>	

2.3 Specifications**2.3.1 General****Specifying Requirements**

The following guidelines are to help you determine whether a description of requirements is adequately clear, complete, and detailed. It will also help in refining the purchase plan and in determining what special provisions or requirements should be included in other parts of the solicitation document and contract.

1. Ask yourself what is being purchased.
 - a. Is there a clear description of the supplies or services to be furnished?
 - b. If background information is included, is it distinguishable from the contract objectives and contract requirements?
 - c. Is it clear whether a design, performance, or functional requirement is being described? (See PM 2.3.2.a.)
 - d. Have delivery or performance requirements been spelled out?
 - e. Are any special requirements spelled out?
 - f. If work items are to be priced on a per-unit basis, have the estimated quantities and units of measure been indicated?
 - g. Have the specifications and drawings been approved as necessary?
2. Ask yourself what problems the contractor is likely to run into in performing the work or making the delivery.
 - a. Are site access procedures and work periods indicated?
 - b. Are material submissions identified?
 - c. Are adequate areas available for storage of contractor equipment and materials?
 - d. Are on-site safety and fire protection requirements indicated?
 - e. Are coordination requirements between the contractor and other on-site activities stipulated?
3. Identify any responsibilities the Postal Service will need to carry out.
 - a. Do the specifications indicate whether any services will be furnished to the contractor by the Postal Service?
 - b. Has any Postal-Service-furnished property been identified?
 - c. Has a Postal-Service-furnished property list been included?
 - d. Do the specifications indicate actions that must be taken by the Postal Service?

4. Put yourself in the contractor's shoes. Try to:
 - a. Structure your pricing and technical proposals.
 - b. Estimate resources needed and costs.
 - c. Identify potential cost and schedule risks, material procurement problems, staging and site activities problems, labor problems, and areas of conflict.
5. Picture yourself in the role of the contracting officer's representative responsible for monitoring performance and signing acceptance reports.
 - a. Have quality assurance requirements been specified?
 - b. How will the Postal Service tell whether the contractor has complied with all requirements?
6. Formulate requirements for:
 - a. Specialized solicitation instructions.
 - b. Specific management requirements (for example, the requirement that the contractor keep track of costs and performance milestones for various elements of the work).
 - c. Prebid or preproposal conference.
 - d. Specialized contractor experience requirements.
 - e. Special contract clauses.
 - f. Site visit procedures.
 - g. Contract administration and inspection.

2.3.3	Product Descriptions
--------------	-----------------------------

Using Brand Names in Specifications

Requirements for Brand-Name Descriptions

1. Brand-name product descriptions must comply with PM 2.3.3.a.
2. All known acceptable brand-name products must be cited.
3. Brand-name or equal product descriptions are required to describe the items' essential characteristics. The contracting officer must ensure that only the necessary characteristics of the brand-name product are listed. Refer to the sample for this procedure, "Brand Name or Equal Product Description."

Sample for PH 2.3.3, Product Descriptions
Brand-Name or Equal Product Description

BRAND-NAME OR EQUAL PRODUCT DESCRIPTION

Calculator, Programmable, Hand-Held. The calculator must be equal to model XY 65, manufactured by the XYZ Corporation, 1704 Main Street, Your Town, Utah XXXXX-XXXX.

To be considered equal, the calculator must include the following features:

Readout	—	0.125 in figures
Battery life	—	6 hours of continuous operation
Programmability	—	40 step
Memory	—	must retain memory when calculator is off

To be considered equal, the calculator must support the following functions:

Full floating decimal point	Sum to memory
Square root	Product to memory
Square	Display to memory
Log Base 10	Recall memory
Antilog Base 10	Clear display
Sine, cosine, tangent	Clear function and display
Cotangent, secant, cosecant	Clear function, display, and memory
Pi to 5 decimal places	Radian/degree selection and operation
3 addressable memories	

The calculator must include the following physical components:

rechargeable batteries
 print out
 carrying case
 power supply for AC operation.

If there are functions available on the brand-name product that are not required, they should not be listed in the description. Descriptions such as "full engineering capability" are vague and should not be used. However, a statement that "all mathematical functions of the XY 65 are required" is suitable if it is true.

Chapter 3

Sources

3.1 Supplies and Services

3.1.3 National and Regional Contracts and Ordering Agreements

I. The Systems Purchasing Concept (3.1.3.c)	3.1-1
II. Establishment of Systems Contracts (3.1.3.c)	3.1-1
III. The Procurement Process for Systems Contracts (3.1.3.c)	3.1-3
IV. Administration of Systems Contracts	3.1-4

3.1.5 Other Government Sources

I. Ordering Fuel (3.1.5.d)	3.1-4
II. Procuring Printing (3.1.5.f)	3.1-5

3.1.6 Commercial Sources

I. The Approved Products Purchasing Program (3.1.6.b)	3.1-5
II. Defining the Requirements for Approved Products Purchasing (3.1.6.b)	3.1-6
III. Qualifying Sources for Approved Products Purchasing (3.1.6.b)	3.1-7
IV. Using Ordering Agreements for Approved Products (3.1.6.b)	3.1-8
V. Administering the Approved Products Program (3.1.6.b)	3.1-9
VI. Ordering Approved Products (3.1.6.b)	3.1-10
VII. Planning for Prequalification of Contractors (3.1.6.c)	3.1-10
Checklist: Desired Contractor Qualifications	3.1-16
Exhibit: Milestone Schedule for Prequalification and Solicitation	3.1-17
VIII. Advertising for Prequalification Statements (3.1.6.c)	3.1-13
IX. Evaluating Prequalification Statements (3.1.6.c)	3.1-13
Format: Prequalification Evaluation Format	3.1-18
X. Notifying Qualified/Nonqualified Contractors (3.1.6.c)	3.1-14
XI. Soliciting Proposals from Prequalified Contractors (3.1.6.c)	3.1-15

3.2 Publicizing Purchase Actions

3.2.2 Methods of Publicizing

I. Determining Whether to Publicize and What Steps to Take	3.2.1
--	-------

	Flowchart: Solicitation Publicizing Process	3.2-3
II.	Preparing and Transmitting Commerce Business Daily (CBD) Synopsis	3.2-2
	Instructions: CBD Synopsis Format	3.2-4
3.3	Contractor Qualifications	
3.3.1	Responsible Prospective Contractors	
	I. Evaluating a Business Enterprise (3.3.1.e)	3.3-1
	II. Conducting Preaward Surveys (3.3.1.e.5)	3.3-2
	Sample: Solicitation Provision on Preaward Information	3.3-4
	Checklist: Criteria for Deciding Whether to Conduct On-Site Preaward Surveys ...	3.3-5

3.1 Supplies and Services

3.1.3 National and Regional Contracts and Ordering Agreements

I. The Systems Purchasing Concept (3.1.3.c)

The Arco Department Store in Midcity, U.S.A., has eight locations in the area. Under an agreement with Brown's Office Supply, each store orders supplies as needed from Brown's catalog, and has them delivered to the store, at 30 percent less than listed prices. Arco's central accounting office receives a single monthly bill from Brown's for all stores' supplies. Arco is using *systems purchasing*: an agreement under which a single vendor receives and fills telephone or catalog orders from multiple locations at fixed prices, and issues a periodic consolidated bill for all orders.

Systems purchasing combines the advantage of buying in quantity—the market power to obtain uniformly high quality products at a good price—with the advantages of placing small, individual orders as needed. Using systems purchasing, a business enterprise can reduce its central warehousing and inventory control costs, its overall inventory investment, and its need for storage space at each location. The use of consolidated billing saves accounting costs. Building rapport with a supplier working under a long-term agreement pays off in lower prices, better service, and greater understanding and responsiveness to particular needs.

II. Establishment of Systems Contracts (3.1.3.c)

The Postal Service uses a systems contract, defined in PM 3.1.3.a.2, as its systems purchasing instrument. Systems contracts may be regional or national in scope, and are the responsibility of the Office of Procurement at Postal Service Headquarters and the five Procurement and Materiel Management Service Centers (P&MMSCs).

When to Use a Systems Contract

The Procurement Policies and Programs Division (PP&PD) must approve the items or classes of items proposed for procurement under a systems contract. Generally, suitable items will be:

1. Commercially available;
2. Standard, simple, and inexpensive, requiring no special training, maintenance, or repair;
3. A homogeneous group or product line, like office supplies, allowing a single vendor to efficiently meet Postal Service requirements;
4. Required on a recurring basis by many activities;
5. Available from numerous vendors; and
6. Ordered by, and delivered directly to, the end user.

Examples of suitable purchases under a systems contract are:

1. Office supplies;

2. ADP supplies;
3. Electrical supplies;
4. Plumbing supplies; and
5. Vehicle repair parts.

Requirements Development

Contracting officers in the Office of Procurement and the P&MMSCs are responsible for defining the requirements for a systems contract, with assistance from lower-level procuring activities and other Postal Service activities, as follows:

1. *For items currently stocked in supply centers:* Coordinate with the Office of Materiel Management to ensure an orderly reduction of supply center inventories and transition to the new supply arrangement.
2. *For electrical and plumbing supplies:* Coordinate with the Office of Maintenance Management on items, descriptions, quantities, and current or likely sources.
3. *For vehicle repair parts:* Coordinate with the Office of Fleet Management on specific parts, descriptions, quantities, and current or likely sources.

Steps to be taken:

1. *Develop a statement of goals and objectives.* Determine what items are needed on a continuing basis, and what geographical area needs to be covered. Determine quality responsiveness, reliability, and delivery requirements, and decide on the type of ordering desired (oral or written).
2. *Establish planning assumptions.*
 - a. *Market Analysis.* How many vendors of the items have adequate resources and delivery capability to meet the necessary delivery requirements? (See the treatments of market research in PM and PH 2.1.2.)
 - b. *Support Issues.* What are the essential contractor support requirements? What types of catalogs should the vendors provide? What types of reports are needed from the ordering offices and from the supplier? Does the volume and dollar value of Postal Service orders justify a dedicated or partially dedicated vendor representative to handle its individual orders? Is it necessary to have a dedicated representative to work with the Postal Service?
 - c. *Distribution.* Where will the items be used? From where should the items be ordered? Can suppliers adequately distribute the items to the intended users? If the items are currently stocked in the Supply Centers, what steps must be taken to ensure an orderly transition to the systems contract?
3. *Develop a requirements description.* The description must include:
 - a. The specific items to be purchased;
 - b. Commercial item descriptions for each item desired (contact the General Manager, Technical Services Division, USPS Research and Development Laboratories, 11711 Parklawn Drive, Rockville, MD 20852-8145 for assistance);
 - c. The unit of issue for each item desired; and

- d. The estimated annual orders for each item or category of items on an annual basis.
- 4. *Send the statement of goals and objectives, planning assumptions and draft requirements description to the Procurement Policies and Programs Division (PP&PD) for approval.* PP&PD will determine the appropriate scope of the systems contract—national, regional, or subregional.
- 5. *Circulate the requirements description.* Solicit the comments of:
 - a. The Office of Materiel Management;
 - b. The Office of Maintenance Management, if affected;
 - c. The Office of Fleet Management, if affected;
 - d. Major requiring activities; and
 - e. The Office of Procurement, if the proposed systems contract is regional in scope.
- 6. *Request final approval of the systems contract from PP&PD.* Include in the request the comments of other Postal Service activities and any modifications in the original proposal.

III. The Procurement Process for Systems Contracts (3.1.3.c)

The procurement process for systems contracts is governed by the policies in Chapter 4 of the PM and the accompanying PH procedures. The guidelines below are specific to systems contracts.

Preparing the Solicitation Package

In addition to the requirements description and the usual solicitation elements, include in the solicitation package the following elements.

- 1. *Technical Evaluation Criteria for Vendor Selection.* These criteria must allow the Postal Service to select the vendor that best meets its needs. Consider:
 - a. Product distribution plan and previous experience in supplying similar items to multiple locations;
 - b. Financial resources and record of financial stability;
 - c. Personnel staffing and management;
 - d. Responsiveness (turn-around time on orders);
 - e. Quality of products and quality control program;
 - f. Customer complaint system;
 - g. Ability to provide required management information reports; and
 - h. Consolidated billing and payment arrangement.
- 2. *Quality Control Program.* Establish clearly in the solicitation the quality control requirements and program.
 - a. *Warranties.* Products purchased under systems agreements will rarely require the use of other than standard commercial warranty provisions provided by the vendor.

- b. *Inspection.* The inspection program for goods must be discussed. The goods provided will normally be inspected by the receiving organization at time of receipt. The Postal Service may decide to use a blind product testing approach, diverting deliveries of the items at random for testing at an independent test laboratory to ensure continuing product quality.
- c. *Complaint System.* The Postal Service should require a user complaint system as an additional method to monitor product quality and vendor responsiveness. This program will normally be administered by the vendor, with review by the Postal Service.

IV. Administration of Systems Contracts

The systems purchasing program requires that the responsible contracting officer monitor performance to ensure that the Postal Service maintains high product quality at competitive prices.

Each systems purchasing contract should be reviewed on a periodic basis.

- 1. *Vendor Reviews.* Vendors should be reviewed periodically to determine:
 - a. Responsiveness to Postal Service requests;
 - b. Timeliness in filling orders;
 - c. Accuracy in filling orders;
 - d. Effectiveness of internal quality assurance program; and
 - e. Overall contract administration.
- 2. *Product Reviews.* The products delivered by the vendors should be reviewed to determine if product quality is being maintained. This may be done by two means.
 - a. *Customer Complaints.* Conduct a review of the customer complaint program. Analyze trends and target products with statistically significant complaint levels for further review.
 - b. *Blind Product Testing.* Periodically sample delivered products by means of a blind testing program in independent or Postal Service laboratories.

3.1.5	Other Government Sources
--------------	---------------------------------

I. Ordering Fuel (3.1.5.d)

Annual Fuel Requirements of 20,000 Gallons or Less

The Postal Service and the Defense Fuel Supply Center (DFSC) of the Defense Logistics Agency have agreed that it is mutually beneficial for the Postal Service to procure annual fuel requirements of 20,000 gallons, or less, locally. The Postal Service commonly uses indefinite delivery contracts and basic pricing agreements (BPAs) with local suppliers to procure fuel locally. In cases of emergency, DFSC provides assistance for annual requirements of 20,000 gallons or less.

Annual Fuel Requirements in Excess of 20,000 Gallons

Annual fuel requirements that exceed 20,000 gallons *must* be submitted to DFSC.

DFSC, not the Postal Service, awards the contract. In the event of any contractual problem (vendor default, wrong product, and the like) the DFSC contracting officer is the only person authorized to negotiate with the contractor.

A DFSC contract allows the using activity to issue a BPA to the contractor in order to furnish appropriate instructions. Procurement personnel should establish these BPAs in accordance with PH 4.2.5-II. However, in the case of BPAs for fuel, certain specific requirements must be addressed, as follows:

1. Establish individual order limitations at the maximum tank capacity (specified in gallons, not dollars) that is listed in the applicable *DFSC Contract Bulletin*.
2. Include instructions in the BPA stating that the contractor must forward a copy of the DFSC "price change authorization" with the first invoice at the new price.
3. Include a statement in the BPA that the vendor's *signed* delivery receipt is the proof-of-delivery document. Any deviation, such as a vendor's request for a written delivery order, must be handled as an exception.
4. Issue separate BPAs for each line item.

Keep in mind that the basic contract award is not recorded in the Computerized Procurement and Supply System (COMPASS). Therefore, the projected contract cost is not captured for reporting purposes if the normal BPA procurement award code is shown in the BPA number. Accordingly, the procurement award code for *delivery orders* should be included in the order number for these BPAs.

II. Procuring Printing (3.1.5.f)

Contracting officers at the Service Centers, Service Offices, and Field Divisions are authorized to procure printing from commercial sources up to their delegated level of authority for supplies and services. They should evaluate the complexity of the printing job before exercising that authority, however. The Government Printing Office (GPO) should be used as the printing source when its expertise in defining and managing the job, and identifying a suitable source, would benefit the Postal Service. Further, the printing procurement and management capabilities of the Printing Division at Headquarters should be used when additional expertise is needed.

3.1.6	Commercial Sources
-------	--------------------

I. The Approved Products Purchasing Program (3.1.6.b)

The approved products purchasing program is described in the PM. The Office of Materiel Management at Headquarters administers the program and coordinates with sponsor organizations the development, testing, and purchase of all approved product items.

Supply categories in the program must meet the following criteria:

1. The items are standard commercial products, or modifications of commercially available products, that are required on a recurring basis.
2. Adequate competition is present.
3. The items do not have complex maintenance support, operator training, or standardization of parts and components requirements.
4. The items are ordered by, and delivered directly to, the end user.

Typically, products are included in the approved products purchasing program when quality or conformity to Postal Service specifications is more important than price. Floor equipment, waxes, and scrubbers are examples. The products are usually purchased in small quantities, and the approved models may vary from area to another.

II. Defining the Requirements for Approved Products Purchasing (3.1.6.b)

The sponsor organization (composed of the requiring activities) defines the requirements, determines the funding arrangement, and assists the Office of Materiel Management and the contracting officer in developing and administering the agreement. The process of approving new items or supply categories may be initiated at either the national or the regional level. Steps in requirements development are listed below.

1. *Develop a statement of goals and objectives.* Define the supply categories. Is price paramount, or is quality or performance more important because of safety or other considerations? Are there other procurement objectives, such as timeliness of delivery, or quality control standards?
2. *Establish planning assumptions.*
 - a. *Market Analysis.* Does a commercially available product exist that can satisfy Postal Service needs or can one be modified for our purposes? How many vendors have resources and capacity adequate to meet delivery needs?

Can vendors modify their product as necessary to meet Postal Service performance standards and still use the present production line? It is in the Postal Service's interest to avoid restrictions and customization in the requirements statement that might limit competition.
 - b. *Support.* What are the essential safety and support needs? Is maintenance required? Is training required? Is standardization important? If so, will it most likely be provided in-house, by the vendor, or by another contractor? Will the Postal Service need to obtain rights to any proprietary information from the vendor to perform its own maintenance? Developing a detailed maintenance plan for capital equipment will help to identify maintenance needs.
 - c. *Distribution.* Where will the product be used? Can vendors adequately distribute the items to the intended users?
3. *Develop a requirements description.* The description must address all pertinent requirements such as physical and performance requirements, inspection and acceptance, quality assurance, warranties, delivery, packaging, customer complaint system, funding/order/payment process, maintenance and repair arrangements, and estimated volume of orders. It may take one of several forms. In order of preference, they are:

- a. Accepted commercial standards (if they exist) and/or product descriptions in vendors' commercial product literature.
 - b. Commercial item descriptions. Contact the General Manager, Technical Services Division, USPS Research and Development Laboratories, 11711 Parklawn Drive, Rockville, MD 20852-8145 for assistance.
 - c. Performance descriptions. These may be useful when a commercial product exists but must be modified for Postal use, and performance is more important than physical configuration.
4. *Obtain technical advice.* The sponsor organization should consult the Office of Materiel Management to determine if it has information that may assist in this process. Materiel Management may suggest consultation with the Engineering and Technical Support Department, the Postal Service Research and Development Laboratory, or the Procurement Technical Division.
 5. *Advertise the requirements statement.* Advertise the addition of new items or a new supply category in the *Commerce Business Daily* (CBD). Notify vendors on the source list. Announcements in trade or industry publications may also be appropriate.
 6. *Hold vendor conferences, if useful.* In some instances, the sponsor organization and the contracting officer may hold a conference with prospective vendors to review and comment on the requirements statement. These conferences can promote a useful exchange of information and help the Postal Service determine whether the requirements statement is too restrictive or too vague.

III. Qualifying Sources for Approved Products Purchasing (3.1.6.b)

To qualify a producer, the Postal Service must arrange for testing in accordance with the requirements description. The test program must permit reasonable examination of the item under actual or simulated operating conditions. Whenever possible, vendors should be required to submit their products for testing by a certified independent testing laboratory, and to have the results sent directly to the Postal Service. Tests may also be conducted in Postal Service installations or at the Research and Development Laboratories.

Test Program Guidelines

The test program should be developed by the sponsor organization, in cooperation with the Office of Materiel Management and technical activities within the Postal Service, and should cover the following topics.

1. *Test Procedures.* Describe test procedures, including all tests to be performed. List major and minor defects, and point out those which, singly or in combination, may cause the product to fail. State whether manufacturing drawings or other support information must be submitted with the product.
2. *Test Sites.* If Postal installations will be used in testing, list them. Site selection will depend on the nature and complexity of the product being tested.
3. *Cost.* Testing is a cost that should be borne by the prospective vendor. When testing is performed by an independent laboratory, the vendor is responsible for paying the laboratory directly. A fee schedule associated with Postal Service testing of

products may be published to defray Postal Service costs. However, fees should be kept reasonable to avoid discouraging vendor participation and limiting competition.

4. **Notification.** Instruct vendors to have test results from the independent laboratories submitted directly to the Postal Service within 60 days after the test report becomes available. (The testing period is 180 days.) Test results should be kept confidential until released by the Office of Materiel Management. Arrange to notify each vendor in writing of the results of the test program within 60 days of receipt of the report. Successful vendors should be invited to participate in the approved products purchasing program. Vendors whose products failed the tests should be notified of their defects, and should be allowed to remedy the problem and have items retested if they desire.

IV. Using Ordering Agreements for Approved Products (3.1.6.b)

Ordering agreements are often the most advantageous method of procuring approved products in terms of price and flexibility, particularly from regional or national suppliers. The ordering agreement must be carefully constructed to harmonize Postal needs and current corporate purchasing practices for the commodity. The more closely the Postal Service models its ordering agreements on private sector purchasing agreements and still protects its interest, the more successful it will be.

As interested vendors respond to publication of an approved products program, the contracting officer should:

1. Mail a copy of the requirements package, the test and approval program, and the ordering agreement to each respondent.
2. Keep logs of all vendors who have been sent copies of the package. The log should include the dates products were submitted for testing, the test results, the date of receipt of the testing report, results and dates of any retesting, and dates of notification of approval or disapproval.
3. Conduct negotiations with vendors whose products have passed Postal Service or independent testing (see PH 3.1.6-III, above) to conclude an ordering agreement. The sponsor organization will participate as technical advisor in these negotiations as necessary.
4. Perform a determination of responsibility, and eliminate from the program any qualified vendor who:
 - a. Has performed unsatisfactorily in the past because of failure to control quality or persevere in correcting defective products; or
 - b. Is delinquent on pending orders and demonstrably unable to meet the delivery schedule for the new orders.
5. After conclusion of an agreement and determination of responsibility, publish the following information in the Postal Bulletin, pending publication in the catalog of approved products:
 - a. Name, address, and telephone number of vendor (corporate headquarters).
 - b. Summary of pricing arrangement, maintenance, warranties, and the like, covered in the agreement.

- c. Agreement number.
- d. Any restrictions on the procurement of the item, maximum order limitations, and funding approval.
- e. The Postal Service contact point for quality assurance problems and complaints.
- f. Points of order placement: local distributor, regional office, central plant, and so on.
- g. Beginning and ending dates of the agreement.

V. Administering the Approved Products Program (3.1.6.b)

Both the sponsor organization and the contracting officer must administer the approved products program to ensure that the Postal Service continues to receive high-quality products at competitive prices.

Periodic Evaluation

The commodity manager in the sponsor organization should conduct a periodic evaluation of each approved product category. Review each category to determine whether current sources continue to provide quality products at competitive prices. Analyze any industry, product, technological, price, or other trends that might have an impact on Postal purchasing strategy.

The contracting officer should review each product category to determine whether product quality is being maintained. Use one or more of the following means, as appropriate:

- a. *Customer Complaints.* Review customer complaints and the system for handling them. Analyze trends and identify vendors with statistically significant complaint levels. Investigate the complaints about these vendors to try to pinpoint the causes.
- b. *Blind Product Testing.* Set up a blind product test program to periodically sample delivered products for test by independent or Postal laboratories.
- c. *In-Plant Inspection.* Schedule in-plant inspection visits (if permitted in the ordering agreement) and review the vendor's quality assurance program.

Notify vendors in writing of any problems you identify, and suggest corrective measures. Require them to respond in writing within 15 calendar days, outlining the actions they intend to take and the timetable for them. Follow up to make sure the problems have been solved.

Disqualification

Under the terms of the ordering agreement, the contracting officer may disqualify a vendor who violates the terms of the ordering agreement and consistently fails to maintain the quality of its products in compliance with Postal requirements, by taking the steps below.

1. Send a written notice of disqualification to the vendor, stating the reasons for your action. Use concrete evidence: testing data, complaints, and the like. Inform the vendor that all pending orders are immediately cancelled and should be returned unfilled.

2. Publish the notice of disqualification in the *Postal Bulletin*.
3. Advise ordering offices that all pending orders with the disqualified vendor are cancelled and that no new orders are to be placed with that vendor until further notice.

Requalification

A disqualified vendor must meet the following conditions to requalify:

1. Provide satisfactory evidence to the contracting officer that the problems which prompted the disqualification have been corrected;
2. Demonstrate the ability to maintain consistent product quality over a reasonable period of time; and
3. Have its products retested and approved. The vendor must bear all costs associated with the retest of the product. The commodity manager will decide who is to do the retesting. If it is to be the Postal Service, charge fees sufficient to cover expenses.

The contracting officer will send a written notice of requalification to the vendor upon successful completion of any retesting and correction of deficiencies, and the notice will be published in the *Postal Bulletin*. The notice will also advise ordering offices that they may now place orders with the requalified vendor.

VI. Ordering Approved Products (3.1.6.b)

Order approved products covered by an ordering agreement as the agreement specifies. Follow standard Postal Service ordering and purchasing procedures, including use of local purchase authority and purchase orders. Operating divisions are encouraged to establish whatever local purchasing arrangements appear to be in the Postal Service's interest, including basic pricing agreements.

VII. Planning for Prequalification of Contractors (3.1.6.c)

The prequalification process reduces a large number of prospective contractors to those who have demonstrated their ability to perform consistently to high standards of quality and reliability. Properly used, prequalification can reduce the risk of poor contractor performance. Limiting solicitation to prequalified contractors also reduces the administrative burden on the contracting officer. The contracting officer should begin prequalification planning approximately six months before the anticipated contract award date, depending on the size and complexity of the procurement. Contractors may be prequalified for a single purchase or for all purchases within a specified period of up to one year.

Steps

1. Determine whether to prequalify contractors for a particular product or service, or a specific category of related products or services. Consider contractor prequalification when one or more of the following applies:
 - a. A significant dollar amount (generally more than \$500,000 per year) is involved.
 - b. Failure to perform the contract successfully and on time would seriously jeopardize Postal operations or delay other Postal programs.

- c. The Postal Service has experienced poor contractor performance of a similar requirement.
2. If prequalification seems to be in the interest of the Postal Service, obtain the approval of the APMG, Procurement and Supply, unless the contract is of a type covered in Chapter 8 or 11 of the PM. These contracts have their own procedures for prequalification.
3. Identify the criteria for contractor prequalification. These criteria should have a direct bearing on a company's ability to perform successfully. Use the checklist for this procedure, "Desired Contractor Qualifications," as a guide. Add or delete criteria, and adjust the relative importance of each, as needed for the particular procurement.
4. Prepare a schedule for the prequalification and solicitation process, indicating milestones in terms of months before or after award. The exhibit for this procedure, "Milestone Schedule for Prequalification and Solicitation," presents a suggested milestone schedule. Be sure to allow adequate time for evaluation of contractor prequalification statements. Work done during this phase will lessen the work and time required for the later phases of solicitation and evaluation of offers.
5. Develop a plan for notifying prospective offerors of the Postal Service's intent to use prequalification procedures.
 - a. Compile a list of known, responsible contractors who are likely to be interested in submitting an offer.
 - b. Plan to place an advertisement in the *Commerce Business Daily* (CBD). Identify other industry publications in which an advertisement for prequalification statements should be placed.
6. Develop a prequalification package to provide to those contractors who wish to develop a prequalification statement. The prequalification package should include:
 - a. A clear and complete statement of the requirement in the form of a purchase description, statement of work, or other specification, sufficient to enable a firm to determine whether to submit a prequalification statement; and
 - b. A request that the potential offeror provide a prequalification statement that contains the following information:
 - (1) *For products:*
 - (a) A complete set of drawings of the product being offered;
 - (b) A brief description of the manufacturing processes;
 - (c) A list of major subvendors (vendors of forgings, castings, or exotic material, for example);
 - (d) A facilities description and list of plant equipment, machinery, special tooling fixtures, and the like;
 - (e) A description of the quality assurance program, and a copy of the manual;
 - (f) A technical briefing (if requested); and
 - (g) Submission of samples (if requested).

- (2) *For services:*
 - (a) The company's experience and the experience of the work force;
 - (b) A facilities description;
 - (c) Availability of support and necessary equipment;
 - (d) Availability of kits and parts (if applicable);
 - (e) A list of major subvendors;
 - (f) A description of the quality assurance program, and a copy of the manual;
and
 - (g) A description of the safety program.
 - (3) The years of experience that the company, as currently organized, has had in delivering the required products or services.
 - (4) A complete list of current contracts with estimated completion dates, dollar values, purchasers, and names and telephone numbers of purchasers' representatives.
 - (5) References from at least five major contracts successfully completed within the past five years that are comparable to the proposed procurement. (References should include name of purchaser, name and telephone number of purchaser's representative, name and value of procurement, and completion date.)
 - (6) A list of all Postal work completed within the last five years. The list should include the name and location of the work, contract number and value, date completed, and contracting office location.
 - (7) The company's most recent annual financial statement, preferably audited by a CPA. The statement must be for a period ending no more than one year before submission of the statement.
 - (8) References from one or more bonding companies stating the prospective offeror's bonding capacity and the length of time it has been bonded.
 - (9) Bank references stating how long the company has banked with them, its average savings and checking balances (in round numbers), outstanding loans, type and limit of credit available with terms of availability, and the bank's rating of the company as a customer.
 - (10) A description of the company's organization and capabilities, including resumes of key personnel, staff available for the specific project or projects, project control systems, and manpower and equipment resources.
 - (11) A statement on the percentage and type of work the company will perform with its own personnel.
7. Appoint an evaluation committee including representatives, as appropriate, from the Engineering and Technical Support Department, the Engineering Support Center, Procurement Technical Division, and functional and technical representatives of the requiring office to assist the contracting officer in determining the technical capabilities of prospective offerors.

VIII. Advertising for Prequalification Statements (3.1.6.c)

To prequalify prospective offerors, the Postal Service needs to identify companies with previous performance records, active workload, and current financial resources to ensure satisfactory performance. To ensure that industry is aware of upcoming requirements, place advertisements in the CBD and suitable industry publications at least two months before the date you intend to issue the solicitation. Allow interested firms 30 days to respond to the synopsis. The Postal Service will then have at least 60 days to evaluate the statements submitted, and notify offerors of qualification.

Contents of the Advertisement

In a CBD synopsis and any other suitable industry publications in which you are advertising, you should:

1. Describe the general characteristics of the required product or service, or category of products or services, from which purchases are anticipated, in sufficient detail so that a firm can decide whether to submit a prequalification statement.
2. State the requests for prequalification packages must be in writing, addressed to the contracting officer, and received within 30 days of synopsis publication.
3. State that prequalification statements are due within 60 days of the synopsis.
4. Inform contractors that they will be notified within 60 days after submitting their statements whether they have prequalified for the proposed product or service.

IX. Evaluating Prequalification Statements (3.1.6.c)

Evaluate all prequalification statements that are complete and submitted by the date specified in the prequalification advertisement, and reach a decision in time to notify the prospective offeror within 60 days of statement submission. The contracting officer makes the final decision, but may base it on recommendations from the evaluation committee. If the evaluation process raises any reasonable doubt, the company should not be prequalified for the project or category of projects.

Steps

The contracting officer and evaluation committee should proceed as follows:

1. For each complete statement received on time:
 - a. Verify that the prospective offeror has been engaged in similar contractual work for a sufficient number of years to judge reliability and quality of work.
 - b. Determine whether the prospective offeror has the capacity to handle additional work successfully. If more active contracts extend beyond the expected date of the award than the firm's resources can accommodate, it must be given a lower evaluation rating on this criterion.
 - c. Evaluate the offeror's technical capability to provide the product or service, and the adequacy of its quality assurance and safety programs.
 - d. Check the company's references for at least five contracts completed within the last five years. Evaluate the company's demonstrated ability to meet project schedule, budget, and quality requirements.

- e. Check references for previous Postal Service contracts and evaluate performance as in step c above.
 - f. Verify from information provided by the bonding firms that the company has the necessary bonding capacity to undertake the proposed work. Bonding capacity should be at least equal to the estimated cost of the work contemplated.
 - g. Verify from information provided by banks that the company has sufficient cash and credit to meet anticipated short-term contract obligations.
 - h. Ensure that the financial statements submitted include a current balance sheet and income statement. Financial statements which have been independently audited by a public accounting firm are more credible than unaudited statements. Evaluate the company's overall financial condition and stability, with assistance from the Financial Analysis Branch as needed.
 - i. Determine whether the company is capable of successfully performing the required work. Consider qualifications of key personnel; available manpower, equipment, facilities and other necessary resources; management approach; and project control procedures. Site visits and interviews may be necessary to confirm resource information.
 - j. Rate the prospective offeror on other criteria previously identified.
2. For large or complex procurements with many evaluation criteria, develop and assign a value to each, reflecting its relative importance.
 3. Prepare a written record of each evaluation. The format for this procedure, "Prequalification Evaluation Format," provides a model.
 4. Make a final determination on company prequalification. No ranking of companies is necessary, but the number qualifying may not be limited to any predetermined number.

The pool of prequalifying contractors should include only those demonstrably able to perform contractual work meeting cost, time, and quality objectives.

X. Notifying Qualified/Nonqualified Contractors (3.1.6.c)

Within 60 days of statement submission, give all companies submitting timely, complete prequalification statements written notice of their prequalification status. A company may be prequalified for a specific product or service, or for a category of products or services, based on the dollar amount of the work and the company's capabilities.

Steps

1. After determining which companies submitting statements are eligible for prequalification, decide whether each should be prequalified for a specific product or service, or for a category of similar products or services.
 - a. For purchases over \$5 million, prospective offerors must be prequalified for each purchase, and must reapply for prequalification for subsequent purchases.
 - b. For purchases under \$5 million, companies may be prequalified for up to one year for a given category of products or services.
2. Notify each prequalified contractor by letter, informing it:

- a. For single purchases over \$5 million, of the product or service specifications, the estimated cost range, and the anticipated date of the solicitation.
- b. For purchases under \$5 million, that it may submit offers for the category of products of services when notified by the Postal Service. The letter should also state the length of the prequalification period and the date for reapplication.
3. Notify by letter each company that failed to make the prequalified list, giving the reason for the decision. State that the company may again apply for prequalification for future Postal Service work when new prequalification advertisements are issued. Handle any protest that may result from this notification process in the manner required by PM 4.5.

XI. Soliciting Proposals from Prequalified Contractors (3.1.6.c)

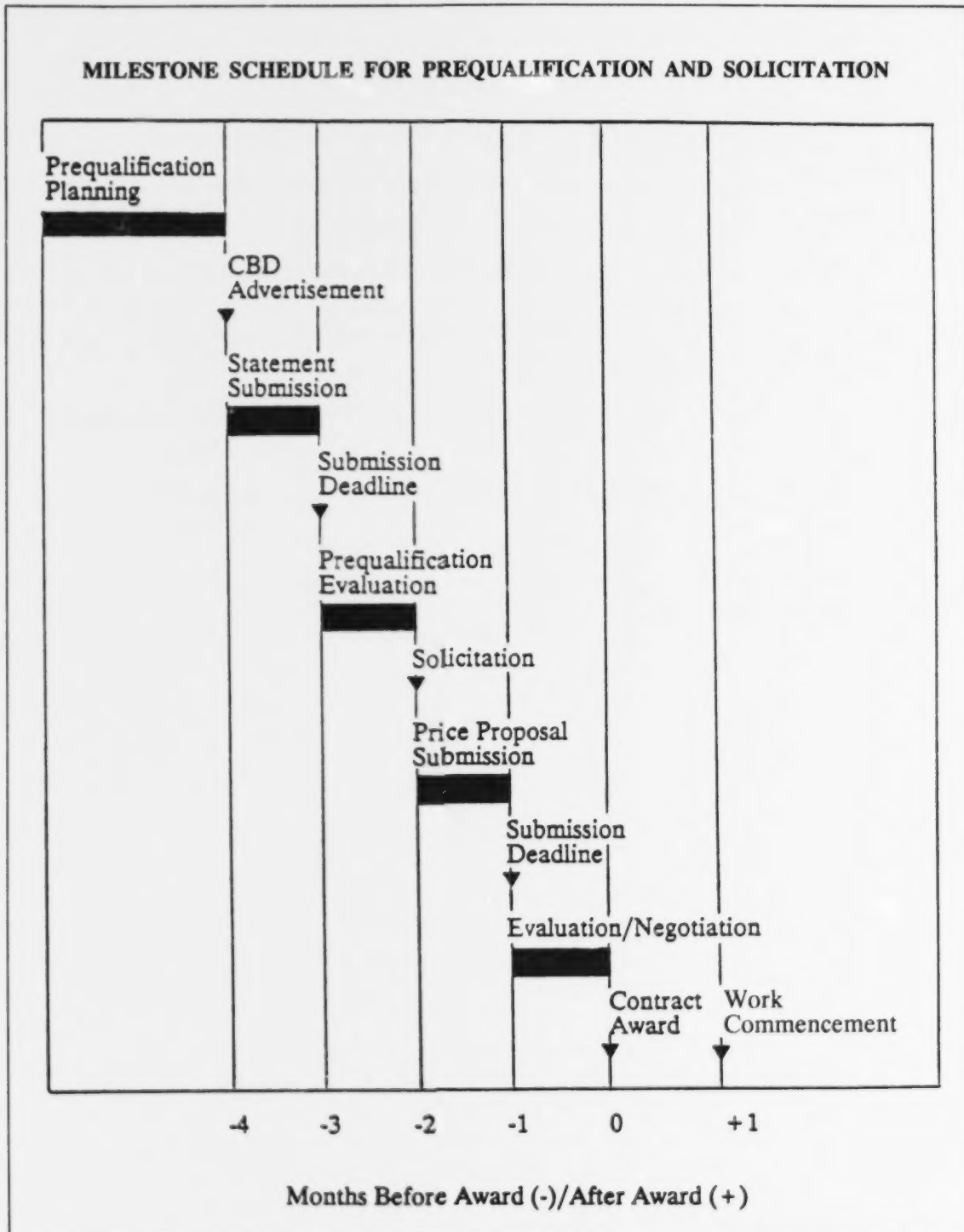
Steps

1. Send solicitation documents to all prequalified contractors for appropriate products and services.
2. Subcontractors and other interested parties must be provided copies of the solicitation upon request. Include:
 - a. A statement that the solicitation is open only to prequalified contractors. (See the DGS, Optional Provision OA-21.)
 - b. The anticipated date of the next prequalification review.
3. If the solicitation package is voluminous or is expensive to reproduce, you may require the subcontractors and interested parties to pay for reproduction and mailing charges. Generally, this charge should be waived if the cost of making copies is less than \$10.
4. Prepare and send copies of the solicitation in accordance with Chapters 3 and 4 of the PM and accompanying procedures and PM Appendix A.
5. Before contract award, perform a determination of responsibility. If you plan to use any new standards of responsibility or to apply existing standards more rigorously than usual in the determination, you must so specify in the solicitation.

Checklist for PH 3.1.6-VII, Planning for Prequalification of Contractors (3.1.6.c)
Desired Contractor Qualifications

DESIRED CONTRACTOR QUALIFICATIONS				
<u>Factor</u>	<u>Desired Qualifications</u>			
	Low	Moderate	High	
1. Financial Stability	_____	_____	_____	_____
2. Corporate Experience	_____	_____	_____	_____
3. Past Performance	_____	_____	_____	_____
4. Company Capacity	_____	_____	_____	_____
5. Current Workload	_____	_____	_____	_____
6. Bonding Capacity	_____	_____	_____	_____
7. References from Past Clients	_____	_____	_____	_____
8. Work Control Procedures	_____	_____	_____	_____
9. Staff Available	_____	_____	_____	_____
10. Office Locations	_____	_____	_____	_____
11. Quality Performance	_____	_____	_____	_____
12. Safety Performance	_____	_____	_____	_____
13. Corporate Management	_____	_____	_____	_____
14. Manpower Resources	_____	_____	_____	_____
15. Equipment Resources	_____	_____	_____	_____
16. Work Performed with Own Forces	_____	_____	_____	_____
17. Substance Abuse Policy	_____	_____	_____	_____
18. Other	_____	_____	_____	_____

Exhibit for PH 3.1.6-VII, Planning for Prequalification of Contractors (3.1.6.c)
Milestone Schedule for Prequalification and Solicitation



Format for PH 3.1.6-IX, Evaluation of Prequalification Statements (3.1.6.c)
Prequalification Evaluation Format

PREQUALIFICATION EVALUATION FORMAT

Company _____

Address _____

Telephone No. _____

<u>Criteria</u>	<u>Information Supplied</u>		<u>Evaluation Rating</u>			
	Yes	No	Poor	Fair	Good	Excellent
1. Experience (# of Years)	_____	_____	_____	_____	_____	_____
2. Active Contracts	_____	_____	_____	_____	_____	_____
3. Completed Contracts	_____	_____	_____	_____	_____	_____
4. Previous Postal Work	_____	_____	_____	_____	_____	_____
5. Bonding Capacity	_____	_____	_____	_____	_____	_____
6. Financial Strength	_____	_____	_____	_____	_____	_____
7. Company's Organization and Capabilities	_____	_____	_____	_____	_____	_____
8. Personnel Resources	_____	_____	_____	_____	_____	_____
9. Equipment Resources	_____	_____	_____	_____	_____	_____
10. Other	_____	_____	_____	_____	_____	_____

Recommendation: Prequalify _____ Reject _____

Evaluator's Comments:

3.2 Publicizing Purchase Actions

3.2.2 Methods of Publicizing

I. Determining Whether to Publicize and What Steps to Take

Purchases Estimated at \$50,000 or Less

No publicizing is required.

Purchases Estimated at Above \$50,000

If the purchase is competitive and not urgent, *and* no advance notice was published, you must follow the steps designated below:

- For purchases estimated at above \$50,000: Follow steps A through D below.
- For any purchases estimated at over \$50,000: Consider step E.

Steps

(For a summary, see the flowchart for this procedure, Solicitation Publicizing Process, at the end of section 3.2.)

- A. Notify all prospective offerors. The method of notification depends on whether you have adequate time to send out a presolicitation notice and whether your purchase requires the use of complex or detailed specifications, plans, or drawings. Proceed as indicated in the following matrix:

		Complex-Detailed	
		Yes	No
Adequate Time	Yes	1	2
	No	3	2

1. Send a presolicitation notice (see PM A.3.3.c).
 2. Send a copy of the solicitation to each prospective offeror on the solicitation mailing list.
 3. Send a copy of the solicitation (but without the specifications, plans or drawings) to each prospective offeror on the solicitation mailing list.
- B. Post copies of the solicitation in the public areas of your facility where the procurement is likely to receive the widest publicity. You may also post copies in public areas of the requirements office.
- C. Stock a sufficient number of copies of the solicitation to accommodate requests by prospective offerors. If you have complex or detailed specifications, plans, or drawings, you must provide a set at your office for public inspection.
- D. Publish a synopsis of your proposed procurement in the Commerce Business Daily (CBD) (see PH 3.2.2-II below).
- E. Prepare an announcement or advertisement of the procurement for free or paid dissemination through the news media. The announcement should contain the same

information as the CBD synopsis but present it in a different form. Note: If you are considering a significant expenditure for this publicity, you should consult with the Communications Department. They can help you develop your overall strategy and design your publicity pieces.

II. Preparing and Transmitting Commerce Business Daily (CBD) Synopsis

Preparation

CBD synopses must be prepared and transmitted in accordance with instructions in the Solicitation Register of the Computerized Procurement and Supply System (COMPASS).

Follow these general rules when entering information:

1. Use upper and lower case letters and standard punctuation.
2. Avoid acronyms and abbreviations except for commonly used abbreviations such as the two-letter State abbreviations.
3. Begin lines of text flush with the left margin.
4. Use double-spaced lines.
5. Use a separate paragraph for each purchase action.
6. Be consistent in using the proper titles for the purchase action, as prescribed by the CBD.

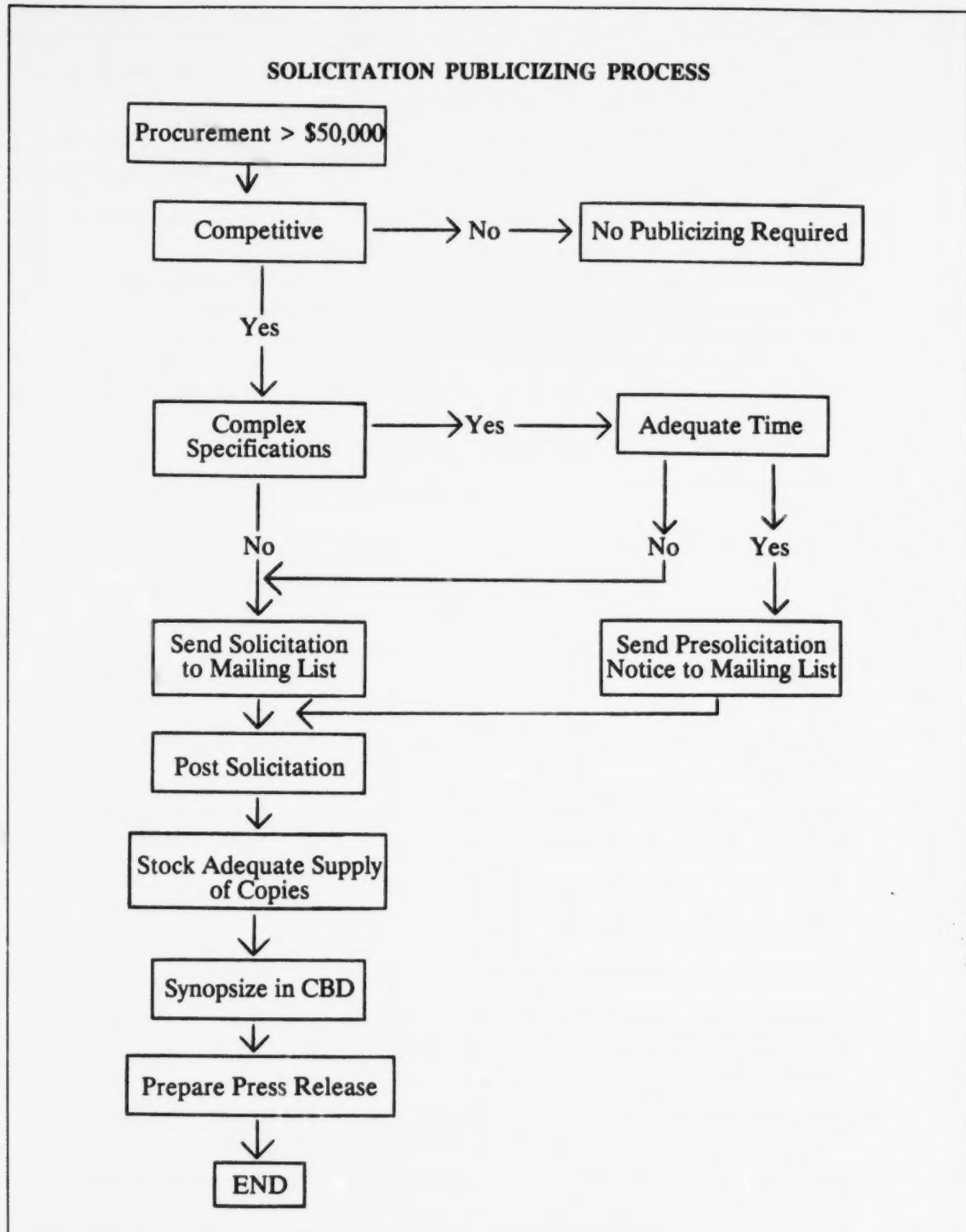
The instruction sheet for this procedure, CBD Synopsis Format, provides detailed instructions and explanations for the 17-item format required by the CBD for all synopses. The exhibit, Classification Codes, provides supply and service codes for item 6 of the format.

Transmittal

Synopses must be transmitted by mail or written telecommunications to:

U.S. Department of Commerce
Commerce Business Daily
c/o Pulitzer Paper
5959 South Harlem Avenue
Chicago, IL 60638-3187

**Flowchart for PH 3.2.2-I, Determining Whether to Publicize and What Steps to Take
Solicitation Publicizing Process**



Instruction Sheet for PH 3.2.2-II, Preparing and Transmitting Commerce Business Daily (CBD) Synopses
CBD Synopsis Format

CBD SYNOPSIS FORMAT

1. *Action Code.* A single alphabetic letter denoting the specific action related to the synopsis. Choices are limited to the following:

A	=	Award announcement
F	=	Foreign procurement announcement or tender
M	=	Modification of a previously announced procurement action (a correction to a previous CBD announcement)
P	=	Presolicitation Notice/Procurement
R	=	Sources Sought (includes architect-engineer synopses)
2. *Date.* Date on which the synopsis is transmitted to the CBD for publication. Use a four-digit number indicating month in two digits and date in two digits (MMDD). All four spaces must be used; for example, use "0225" for February 25.
3. *Year.* Two numeric digits denoting the calendar year of the synopsis. Example: "88" for 1988.
4. *Federal Information Processing Standard (FIPS) Number.* Code number identifying the sending agency. The FIPS number for the Postal Service is 1800. Reference FIPS 95 publication by the National Bureau of Standards.
5. *Contracting office zip code.* The geographic zip code for the contracting office. When using a nine-digit zip code, separate the first five digits and the last four digits with a dash: XXXXX-XXXX.
6. *Classification Code.* Service or supply code numbers are detailed in the COMPASS Users Manual.
7. *Contracting Office Address.* The complete name and address of the contracting office. Field length is open, but you should try to stay within 90 alphanumeric characters.
8. *Subject.* Insert classification code (see item 6) and a brief title describing the services, supplies, or project required. This will appear in the CBD as the bold-faced title in the first line of the description.
9. *Proposed Solicitation Number.* See PM 1.10 for numbering instructions.
10. *Opening/Closing Response Date.* Use a six-digit date, that is, MMDDYY. You can provide explanations in the text. (If transmitting an award announcement, insert "N/A.")
11. *Contact Point/Contracting Officer.* Include the name and telephone number of the information contact and the contracting officer (if not the same person).
12. *Contract Award and Solicitation Number.* If you are not synopsisizing a contact award, enter "N/A."

**Instruction Sheet for PH 3.2.2-II, Preparing and Transmitting Commerce Business Daily
(CBD) Synopses**
CBD Synopsis Format (continued)

13. *Contact Award Dollar Amount.* If you are not synthesizing a contract award, enter "N/A."
14. *Contract Line Item Number.* If you are not synthesizing a contract award, enter "N/A."
15. *Contract Award Date.* If you are not synthesizing a contract award, enter "N/A."
16. *Contractor.* If you are not synthesizing a contract award, enter "N/A."
17. *Description.* This item is open-ended for entry of the substantive description of the contract action. Begin the first line five spaces from the left margin, with succeeding lines flush with the left margin. Include the following elements, to the extent applicable, in paragraph format, with each element separated by two hyphens. As the last element, refer to any Numbered Notes or conditions that should appear in the printed text (see explanation below).

Classification code (see item 6 above). If more than one classification is involved, enter the code for the one with the largest dollar value.

Name of item or description of service.

National stock number, if assigned.

Specification and drawing number.

Manufacturer's part number.

Dimensions.

Predominant material of manufacture.

Quantity, including options for additional quantities shown separately.

Unit of issue.

Destination information.

Delivery schedule.

Solicitation number.

Date proposals are due.

Duration of the proposed contract.

For architect-engineer projects, and other projects for which codes are insufficient: Brief details of the location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and significant evaluation factors.

References to any applicable Numbered Notes. Numbered Notes are a standard set of instructions that appear in full in the first issue of the CBD each week—how to respond to a synopsis, how to obtain specifications, and so forth. Use of a Numbered Note allows you to incorporate these instructions in the synopsis by reference.

Exhibit for PH 3.2.2-II, Preparing and Transmitting Commerce Business Daily (CBD) Synopses
Classification Codes

CLASSIFICATION CODES

A. Supply Codes

<u>Code</u>	<u>Description</u>
10	Weapons
13	Ammunition & Explosives
22	Railway Equipment
23	Motor Vehicles, Trailers and Cycles
24	Tractors
25	Vehicular Equipment Components
26	Tires and Tubes
28	Engines, Turbines and Components
29	Engine Accessories
30	Mechanical Power Transmission Equipment
31	Bearings
32	Woodworking Machinery and Equipment
34	Metalworking Machinery
35	Service and Trade Equipment
36	Special Industry Machinery
37	(Reserved)
38	Construction, Mining, Excavating & Highway Equipment
39	Materials Handling Equipment
40	Rope, Cable, Chain and Fittings
41	Refrigeration and Air Conditioning Equipment
42	Fire Fighting, Rescue and Safety Equipment
43	Pumps and Compressors
44	Furnace, Steam Plants, Drying Equipment (Also Nuclear)
45	Plumbing, Heating and Sanitation Equipment
46	Water Purification and Sewage Treatment Equipment
47	Pipe, Tubing, Hose and Fittings
48	Valves
49	Maintenance and Repair of Ship Equipment
51	Hand Tools
52	Measuring Tools
53	Hardware and Abrasives
54	Prefabricated Structures and Scaffolding
55	Lumber, Millwork, Plywood and Veneer
58	Communication Equipment
59	Electrical & Electronic Equipment Components
61	Electric Wire, Power and Distribution Equipment
62	Lighting Fixtures and Lamps
63	Alarm and Signal Systems
65	Medical, Dental & Veterinary Equipment & Supplies
66	Instruments and Laboratory Equipment
67	Photographic Equipment
68	Chemicals and Chemical Products

Exhibit for PH 3.2.2-II, Preparing and Transmitting Commerce Business Daily (CBD) Synopses
Classification Codes (continued)

A. Supply Codes

69	Training Aids and Devices
70	General Purpose ADP Equipment (Software, Supplies, Etc.)
71	Furniture
72	Household and Commercial Furnishing & Appliances
73	Food Preparation and Serving Equipment
74	Office Machines and Data Processing Equipment
75	Office Supplies and Devices
76	Books, Maps and Other Publications
79	Cleaning Equipment and Supplies
80	Brushes, Paints, Sealers and Adhesives
81	Containers, Packaging and Packing Supplies
83	Textiles, Leathers and Furs
84	Clothing and Individual Equipment
85	Toiletries
87	Agricultural Supplies
89	Subsistence
91	Fuels, Lubricants, Oils and Waxes
93	Nonmetallic Fabricated Materials
94	Nonmetallic Crude Materials
95	Metal Bars, Sheets and Shapes
96	Ores, Minerals and Their Primary Products
99	Miscellaneous

B. Service Codes

<u>Code</u>	<u>Description</u>
A	Experimental, Development, Test & Research
H	Expert and Consultant Services
J	Maintenance and Repair of Equipment
K	Modification, Alteration or Rebuilding of Equipment
L	Technical Representative Services
M	Operation / Maintenance of Government Owned Facility
N	Installation of Equipment (Use K to Modify)
P	Salvage Services
Q	Medical Services
R	Architect / Engineer Services
S	Housekeeping Services
T	Photographic, Mapping, Printing & Publication
U	Training Services
V	Transportation Services
W	Lease or Rental, Except Transportation Equipment
X	Miscellaneous
Y	New Construction
Z	Maintenance, Repair or Alteration of Property

3.3 Contractor Qualifications

3.3.1 Responsible Prospective Contractors

I. Evaluating a Business Enterprise (3.3.1.e)

If the Postal Service has had a good business relationship with an offeror, and the contract type and the supplies or services being awarded are similar to those under the offeror's previous Postal Service contracts, the determination of responsibility required by PM 3.3.1.e need only be several sentences. Simply state the success of previous similar contracts and cite them.

If Postal has no recent experience with the offeror, you can evaluate the company by examining three factors:

1. The company itself;
2. The industry of which the company is part; and
3. The effect of the current economic trends.

The Company—General Information

1. *Company's age.* This is an indication of stability. Business failures generally occur in a company's first five years.
2. *Company's line of business.* Check to see if the firm is actually in the business it says it's in by looking at its Standard Industrial Classification (SIC) code, as published by third-party sources. Each business is assigned an industry code based on its primary (and sometimes secondary) activity—that is, the principal product or group of products it makes or distributes, or the services it renders. This is also a means of identifying middlemen, jobbers, and the like.
3. *Company's previous experience with the Federal Government.* Ask the offeror with which agencies it has previously done business and check all references.
4. *Company's past performance.* Evaluate the delinquency rate, and note the frequency of any withholding or deductions.
5. *Public record information.* Search for liens, judgments, debarments, and lawsuits. A company's legal liabilities may affect its ability to perform.
6. *Company's human resources.* This can indicate whether the company can actually do the job itself and may indicate the need for subcontracting. If you can find available data, see whether management personnel are experienced in the line of business in which the company is engaged.

The Company—Financial Data

It is generally more revealing to look at pairs of figures—in other words, to make comparisons. Don't just look at assets, for instance. Look at assets versus liabilities. The following are key areas to evaluate in sizing up financial responsibility:

1. *Financial strength or net worth.* Net worth figures are published by third-party sources. They are calculated by subtracting total liabilities from total assets. Make comparisons with like companies and with the company's own figures in previous years.
2. *Profitability.* Divide profits (after taxes) by sales. The resultant percentage is a measure of efficiency called the "profit margin." A meaningful way to interpret this figure is to compare profit margin figures over several years to establish an upward, downward, or steady trend.
3. *Solvency—the short term.* Sometimes called the "current ratio." Determine the numerical relationship between current assets and current liabilities. It is desirable to have a ratio of 2 to 1 (\$2 in assets to cover \$1 in debts).
4. *Working capital.* Determine this by subtracting current liabilities from current assets. The amount of working capital indicates how well a company can meet its obligations, expand, and take advantages of opportunities. Compare this year's working capital to last year's to get an indication of growth, decline, or maintaining the status quo.
5. *Solvency—the long term.* Divide total liabilities by net worth (see paragraph 1 above). The result should not exceed 100 percent.
6. *Credit reports.* Prompt payment of bills reflects confidence that creditors or investors can have in the company. Habitual tardiness is a signal of financial difficulties.

The Procurement Support Branch of the Office of Procurement at Headquarters is a valuable source of financial data. It maintains financial information on all Postal Service Headquarters contractors.

Remember that the company you are evaluating is part of a larger industry made up of like companies. Compare the figures for the company you are evaluating with published industry averages, to see whether the company is in line with industry trends. If you want to know the major risk with a particular company, look for data on major risk factors in the industry. Generally, the strengths and weaknesses of an industry are reflected in individual companies.

The General Economy

It is worthwhile to keep up on trends in the economy and consider their impact on an industry or a particular firm. For example, a June 12, 1987, *New York Times* item noted that the Federal Communications Commission was seeking to charge higher fees for telephone hookups to information services. If you were investigating the financial background of an offeror that would use extensive telephone and information services in fulfilling your fixed-price contract, you would want to see how well it could absorb the unexpected increase—that is, you would want to analyze working capital versus the expected increase in costs.

II. Conducting Preaward Surveys (3.3.1.e.5)

Types of Preaward Surveys

1. *Desk surveys.* When an offeror has not done work with the Postal Service before, you can usually determine responsibility by examining reports you obtain from independent sources and checking, by telephone and through correspondence, references provided by the offeror itself. Note that when you anticipate relying on

information to be submitted by the offeror, you should include a provision in the solicitation advising offerors of that fact. See the sample for this procedure, "Solicitation Provision on Preaward Information."

2. *On-site surveys.* Because of the expense involved, on-site surveys should be limited to contracts for which an inspection of detailed records at a contractor's facility, or an inspection of the facilities themselves, is key to your determination of responsibility or nonresponsibility. See the checklist for this procedure, "Criteria for Deciding Whether to Conduct On-Site Preaward Surveys."

Surveys for Professional Services

Generally, preaward surveys are not performed for acquisition of professional services such as those provided by doctors, lawyers, or other licensed and/or regulated professions. The types of information listed below are typical of some of the data that you can request from a professional contractor as a basis for determining responsibility.

1. Organizational structure and plan to accomplish the service.
2. Summary of experience in performing the same or similar work.
3. Evidence of pertinent state and local licenses.
4. Evidence of professional liability insurance, or evidence that such insurance can be obtained.
5. Membership in professional organizations.
6. Resume of key personnel with particular emphasis on academic accomplishments pertinent to the service to be performed.
7. Information on the firm or key individuals that reflects their status or professional recognition in their field, such as awards, published articles, and so forth.

Sample for PH 3.3.1-II, Conducting Preaward Surveys (3.3.1.e.5)
Solicitation Provision on Preaward Information

SOLICITATION PROVISION ON PREAWARD INFORMATION

A provision tailored to the procurement should be included in the solicitation when you think that supplemental information may be required to determine responsibility. If you ask offerors to include in their proposals many of the items listed in the sample provision that follows, you can make quality a deciding factor in the early stages of the selection process.

Notice of Preaward Survey

Offerors are advised that the Postal Service may contact prospective contractors to determine their capabilities to perform the work specified in this solicitation. In addition to financial statement and credit rating checks, the Postal Service may visit a prospective contractor's facilities to perform reviews or may ask for additional written information. Areas of interest in regard to this survey may include the following:

1. Performance plans
2. Quality control plans
3. Personnel recruitment and training plans
4. Workload factors for manpower utilization
5. Management plan for handling peak workloads
6. Production capability
 - a. Plant facilities and equipment
 - b. Purchasing and subcontracting
 - c. Labor resources
 - d. Performance record
 - e. Ability to meet delivery schedules
7. Environmental/energy considerations
8. Plant safety
9. Technical and professional abilities
10. Accounting systems
11. Postal Service property controls

Offerors are also advised that accomplishment of this survey is a part of the evaluation process and is not an indication that an offeror will receive an award.

Checklist for PH 3.3.1-II, Conducting Preaward Surveys (3.3.1.e.5)
Criteria for Deciding Whether to Conduct On-site Preaward Surveys

**CRITERIA FOR DECIDING WHETHER TO CONDUCT ON-SITE
 PREAWARD SURVEYS**

A "YES" answer to any of the following questions indicates that an on-site preaward survey might be appropriate. The greater the number of positive indicators, the more appropriate an on-site preaward survey is.

YES NO N/A

- | | | | |
|-------|-------|-------|---|
| _____ | _____ | _____ | 1. Does the offeror's record of performance raise questions about its ability to successfully perform the upcoming contract on schedule? |
| _____ | _____ | _____ | 2. Have you begun a desk survey and determined that information on hand or readily available to you is not sufficient to make a determination regarding responsibility? |
| _____ | _____ | _____ | 3. Is the procurement for items that are <i>not</i> off-the-shelf commercial items? |
| _____ | _____ | _____ | 4. Will the contractor be performing work within the facility you would be visiting during the on-site survey? |
| _____ | _____ | _____ | 5. Is this a cost-reimbursement contract, or a contract with cost-reimbursement elements? |

Chapter 4

Purchasing Methods

4.1 Competitive Purchasing

4.1.2 Solicitations

I. Solicitation Preparation and Related Tasks—Overview	4.1-1
Checklist: Comprehensive Checklist for Solicitation Preparation and Related Tasks	4.1-22
Exhibit: Postal Service Commodity and Service Codes	4.1-25
II. Presolicitation Notifications	4.1-1
Sample: Notification of Solicitation Issuance	4.1-42
III. Conducting a Preproposal Conference (4.1.2.h)	4.1-2
Checklist: Preproposal Conference Topics	4.1-43
IV. Amending a Solicitation (4.1.2.i)	4.1-3
Checklist: Amendment Versus Reissuance	4.1-45
Decision Aid: Should the Time for Receipt of Proposals Be Extended?	4.1-46
V. Cancelling a Solicitation (4.1.2.j)	4.1-4
VI. Handling Requests About Proposed Purchases	4.1-5
Sample: Reminder on Release of Preaward Information	4.1-47
VII. Handling Information Requests About Proposals (4.1.2.k.3)	4.1-6

4.1.3 Receipt of Proposals

I. Proposal Handling	4.1-7
Sample: Memorandum Designating an Employee to Open Proposals	4.1-48
II. Administrative Review of Proposals	4.1-7
III. Deciding Whether to Accept Late Proposals and Modifications (4.1.3.d)	4.1-8

4.1.4 Evaluation of Proposals

I. Overview	4.1-8
II. Technical Evaluation Steps (4.1.4.c)	4.1-9
III. Technical Evaluation Documentation (4.1.4.c)	4.1-10
Format 1: Deficiency Report	4.1-49
Format 2: Strong Point/Deficiency Summary	4.1-50
Format 3: Risk Assessment	4.1-51
Format 4: Evaluation Score Summary	4.1-52

4.1.5	Contractor Selection and Award	
	I. Special Considerations—Rejection of All Proposals (4.1.5.e)	4.1-12
	II. Deciding Whether to Make Award Without Discussions (4.1.5.f)	4.1-12
	III. Making an Award With Discussions (4.1.5.g)	4.1-13
	IV. Determining the Competitive Range (4.1.5.g.2)	4.1-14
	V. Conducting Discussions (4.1.5.g.3)	4.1-14
	VI. Requesting and Evaluating Best and Final Offers (BAFOs) (4.1.5.g.4)	4.1-16
	VII. Best Value Analysis (4.1.5.g.5(a))	4.1-18
	VIII. Planning for Negotiations (4.1.5.g.5(b))	4.1-19
	Exhibit: Negotiation Plan—Outline	4.1-53
	IX. Timing of Award Notification (4.1.5.i)	4.1-20
	X. Conducting Debriefings (4.1.5.j)	4.1-20
	Guidelines: Debriefing Ground Rules	4.1-54
4.1.6	Mistakes in Proposals	
	I. Resolving Minor Informalities or Irregularities	4.1-20
	II. Resolving Apparent Clerical Mistakes	4.1-20
4.2	Simplified Purchasing	
	I. Purchase Documentation	4.2-1
	Checklist: Documentation of Simplified Purchases	4.2-12
	II. Requisition Review	4.2-1
	Checklist: Checklist for Requisition Review	4.2-13
4.2.1	General	
	I. Simplified Purchasing When a Higher Dollar Ceiling is Authorized (4.2.1.b.(1))	4.2-1
	II. Simplified Purchasing Up to \$1 Million for Standard Commercial Products (4.2.1.b.2)	4.2-1
4.2.2	Solicitations	
	I. Standing Price Quotations (4.2.2.c)	4.2-2
	II. Simplified Purchasing Solicitation Preparation (4.2.2.d)	4.2-3
	Exhibit 1: Receiving Report/Accounting and Fiscal Data Sheet	4.2-14
	Exhibit 2: Solicitation: Simplified Purchasing	4.2-15
	Exhibit 3: Offer and Award: Simplified Purchasing	4.2-16
	Exhibit 4: Attachment B, Terms and Conditions	4.2-17
	Exhibit 5: Destination Schedule	4.2-18
	III. Presolicitation Notifications	4.2-4
4.2.3	Receipt and Evaluation of Proposals and Quotations	4.2-4
	Sample: Solicitation Worksheet	4.2-19
	I. Recording Proposals and Quotations	4.2-4
	II. What to Check in Evaluating Proposals and Quotations (4.2.3.b)	4.2-5

4.2.4	Ordering Methods	
	Local Purchase Order Payment Methods and Procedures	4.2-7
4.2.5	Basic Pricing Agreements	
	I. When to Use a Basic Pricing Agreement Rather Than an Indefinite-Delivery Contract (4.2.5.b)	4.2-8
	Chart: Comparison: Indefinite-Delivery Contracts and Basic Pricing Agreements	4.2-20
	II. Standard Basic Pricing Agreement (BPA) Language (4.2.5.f)	4.2-9
	III. Issuing and Documenting Orders Against BPAs (4.2.5.g)	4.2-10
	Sample: BPA Order Register	4.2-22
	IV. BPA Review (4.2.5.h)	4.2-11
	Checklist: Review of BPA Files	4.2-23
4.2.6	Unpriced Purchase Orders	
	Establishing Price Ceilings (4.2.6.b)	4.2-11
4.3	Noncompetitive Purchasing	
	I. Requirement for Justification and Approval of a Noncompetitive Purchase	4.3-1
	II. Unsolicited Proposals	4.3-1
	III. Unauthorized Contractual Commitments	4.3-1
	Format: Agreement for Payment	4.3-2
4.4	Price Negotiation	
4.4.1	Prenegotiation Objectives	
	Developing Prenegotiation Objectives	4.4-1
	Decision Aid: Appropriate and Inappropriate Techniques in Negotiations of Competitive Proposals	4.4-5
4.4.2	Negotiation	
	Preparing for Negotiation Sessions	4.4-2
	Checklist 1: Help in Preparing for Negotiations	4.4-7
	Checklist 2: Improving Your Bargaining Power in a Noncompetitive Situation	4.4-8
	Checklist 3: Agenda for a Negotiation Session	4.4-9
4.4.3	Memorandum of Negotiation	
	Preparing a Memorandum of Negotiation	4.4-3
4.5	Protests	
	I. Analyzing a Protest and Preparing a Contracting Officer's Decision or a Statement to Counsel	4.5-1
	II. Preparing a Protest File	4.5-1

4.1 Competitive Purchasing**4.1.2 Solicitations****I. Solicitation Preparation and Related Tasks—Overview**

The checklist for this procedure, "Comprehensive Checklist for Solicitation Preparation and Related Tasks," provides an overview of the basic steps necessary from receipt of a requisition through issuance of a solicitation as part of a competitive negotiated procurement. Note that it does not address many of the details that should be considered in planning and market research for a procurement, both before and after receipt of a requisition. You should refer also to PM and PH Chapter 2, Procurement Planning; see especially 2.1.4, Individual Plans, and 2.2, Planning Considerations. Also note that many of the steps covered in this checklist are discussed in more detail in subsequent procedures.

The Postal Service keeps usage and historical records on its supplies and services through the use of Postal-unique commodity and service codes. These codes should be on incoming requisitions and you are required to annotate the code on solicitation and award documents in the block provided for that purpose. Your solicitation mailing lists (see PM Appendix A, Section 3) also uses these codes to identify sources of supply. See the exhibit for this procedure, Postal Service Commodity and Service Codes, for a list of these codes.

II. Presolicitation Notifications

At least five working days before you release the solicitation document (two working days for a simplified purchase), you must supply a copy of it to the following organizational elements if any of the following circumstances is applicable. The sample for this procedure, "Notification of Solicitation Issuance," provides suggested language for the forwarding document. If you are sending the copy by mail, call to verify that it has been received.

1. If any part of the solicitation calls for the design or development of a system of records on individuals not previously identified in the USPS List of Systems of Records, supply a copy to the USPS Records Officer at Headquarters.
2. If any part of the solicitation affects the working environment of a Postal Service union member, supply a copy to the Policies and Programs Division, Office of Contract Administration, Labor Relations Department, at Headquarters.
3. If any part of the solicitation involves a service or construction project at a Postal Service installation, supply a copy to the Office of Safety and Health of the Employee Relations Department at Headquarters. You must have a Safety Certificate on file before work can begin.
4. If any part of the solicitation involves technical data, including computer hardware and software (except for commercial software), supply a copy to the Procurement Technical Division, Procurement and Supply Department, 475 L'Enfant Plaza, North Building, Room 4020, Washington, D.C. 20260-6202.

III. Conducting a Preproposal Conference (4.1.2.h)

Timing

The conference should be held as soon as practicable after the solicitation has been issued, and prospective offerors have had some time to scrutinize it. Rule of thumb: Hold the conference no later than halfway through the solicitation period.

The Conference Site

If the site where the work must be performed is crucial to the clarity or pricing of the proposals, the conference should be conducted at or very near the site, with a site inspection as part of the conference. Otherwise, the conference should be held at a location most convenient to the majority of Postal Service and industry attendees. Sometimes—for example, when the site area is extremely small—a separate site inspection may be desirable.

The Conference Focus

A preproposal conference is a way to discover whether the solicitation contains actual or perceived ambiguities or inaccuracies, information that conflicts with industry practice or other sources of potential problems. The preproposal conference is *not* an occasion for changing the solicitation, but it may indicate a need for a formal change (amendment) to be made later (see PM 4.1.2.i and PH 4.1.2-IV). Postal Service personnel *must* inform conferees that statements and explanations at the conference do not change any terms, specifications, or other requirements of the solicitation; only issuance of a written amendment can change the solicitation.

You can use the checklist for this procedure, "Preproposal Conference Topics," in planning the conference coverage.

The Minutes

1. Keep accurate minutes of the conference. A court reporter is the most accurate and, for large and technically oriented conferences, the most cost-effective. Use your judgment. If you expect only two attendees and have only three sources, obviously the expense of a court reporter could not be justified. You must advise attendees that the session is being taped. If there are objections, your response will be dependent on whether or not a professional transcript company is doing the taping. If a professional transcript company is doing the taping you advise the objector that he or she may leave. If Postal Service personnel are doing the taping, you are obligated *not* to tape the session.
2. Distribute a written record of the conference to all prospective offerors as soon as possible, but in any event not later than one week after the conference. Allow at least ten days between the date the record is mailed and the date set for receipt of proposals.
3. Do *not* distribute the written record of the conference as a solicitation amendment. But do issue an amendment, if necessary, to communicate any clarifications arising from the conference that constitute changes.

Tips for Effective Conference Management

1. Ask attendees to provide the procurement office with written questions at least five calendar days (more, if the requirement is highly technical) before the date of the

conference. This will ensure a more successful conference by giving Postal Service employees time to research answers, if necessary, and to ensure that Postal Service experts on areas in question are at the conference.

2. Check out the conference site at least several days beforehand. Make sure it will hold the expected number of attendees, and make arrangements for appropriate seating arrangements and microphones, if necessary.
3. Distribute an agenda that provides for presentations by knowledgeable Postal Service representatives within preset time limits and that gives attendees a chance to get answers to all pertinent questions. If a site inspection is being held in conjunction with the conference, hold questions until *after* the site inspection. (*Note:* If speakers cannot answer a question, they should be encouraged to say, "I don't know—we will investigate and issue a written clarification with the record or as an amendment to the solicitation.")
4. If you might make the award without discussion, emphasize that point at the conference.

IV. Amending a Solicitation (4.1.2.i)

Deciding Whether to Amend a Solicitation or to Cancel and Replace It

It is sometimes difficult to decide whether to issue an amendment or, alternatively, to cancel the solicitation and issue a replacement. Refer to the checklist for this procedure, "Amendment Versus Reissuance," for guidance. If you can check both conditions under either heading, you can feel confident in following through with the action indicated by those conditions. Otherwise, look closely at the specific changes, and weigh the urgency against the likelihood of errors and confusion if massive changes are made to the original document.

Preparing the Amendment

Follow instructions provided by the Document Generation System (DGS).

Using a Changed Page

A decision to use a changed solicitation page as an attachment to the amendment, in lieu of stating the change in the amendment, should be based on the readability of the entire solicitation package as changed. If the change to any one page is more than several typewritten lines, it cannot usually be handwritten from the amendment form onto the original page of the solicitation without losing readability. Further, a solicitation that is readable as a whole package, from page one through to the end, without cross-referencing back to separate auxiliary documents, generally affords—

- Reduced incidence of mistakes in proposals, since offerors are less likely to miss key information; and
- Ease of contract administration for both Postal Service employees and contractors.

The only disadvantage may be the time it takes to issue the changed page.

If you decide to issue a changed page, follow these steps:

1. Refer to the change in general terms in the amendment, and cite the changed page as being attached. Example:

Detailed calibration requirements are specified for Class B maintenance equipment. See solicitation page 40 of 110-Revision 1, attached to this amendment.

2. Insert the change in the copy of the original page and print out the new page. Draw a vertical line in the left margin where additions, deletions, or changed copy appears. Number the page the same as the original page, but assign a revision number to the right of the solicitation number. This will facilitate identification if additional changes are made to the same page in the future. If the change involves added copy that cannot be contained within the original page, add lower case alphabetical designations to the original solicitation page number and include the revision number of the original page. For example, if the calibration requirements cited in step 1 above entailed two additional pages of copy, the reference would be "pages 40, 40a, and 40b of 110—Revision 1."
3. If copy is deleted from an entire page through an amendment and not replaced with new copy, reissue the page blank with a revision number, and place the following legend in the middle of the blank page: "Through the issuance of an amendment to the solicitation, the requirements, terms, or conditions previously listed on this page have been deleted."

Determining Whether to Extend the Time for Receipt of Proposals

Timing is important. The amendment must be issued in time to allow all prospective offerors to consider it in submitting or modifying their proposals. The decision diagram for this procedure, "Should the Time for Receipt of Proposals Be Extended?" will help you decide how to proceed. The time frames provided are discretionary, but if you use different time frames, document their rationale for the solicitation file.

If the current due date is imminent, you can notify prospective offerors of the amendment by telegram or telephone, and follow up with a confirming written amendment. In some instances, however, it may be necessary to extend the time for receipt of proposals.

V. Cancelling a Solicitation (4.1.2.j)

Documentation of the Reason for Cancelling

To preserve good faith with the firms that incur proposal costs in submitting offers on Postal Service requirements, it is essential that decisions to cancel solicitations be well thought out and documented. Accordingly, you must document your reason for cancelling a solicitation, providing full details when not self-explanatory. The documentation will remain in the contract file, in addition to a copy of the notice to offerors (see below). Return all proposals received to the offerors with the notice.

One or more of the following may be reason to cancel a solicitation:

1. The solicitation cited inadequate or ambiguous specifications. (Refer to PH 4.1.2-IV in deciding whether it may be advisable to issue an amendment rather than cancel the solicitation.)
2. Specifications have been extensively revised. (Refer to PH 4.1.2-IV in deciding whether it may be advisable to issue an amendment rather than cancel the solicitation.)

3. The supplies or services being sought through the current solicitation are no longer required. (When the requirements office requests cancellation, insist that they issue the request in writing with an explanation of why their requirement has changed.)
4. Proposals received have indicated that Postal Service needs can be satisfied by a less expensive article materially different from that on which the solicitation was based. (You must provide full details.)
5. There is evidence that proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith. (Be particularly sure to document this well and seek the aid of counsel— legal action may be appropriate.)

Notice to Offerors

You must issue a notice of cancellation to offerors, as an amendment to the solicitation. The notice should be succinct but should provide basic information. For instance, if a changed requirement is to be resolicited, provide as much information about the reissuance as you can—that is, estimate when it will be reissued (if you can), cite the new solicitation number (if you have it), and so on.

VI. Handling Requests About Proposed Purchases

It is important that no one in the Postal Service divulge any information beyond the information provided to all offerors in the publicizing procedures outlined at PM and PH 3.2.2.

Guidelines

1. Requirements Office

The standard reply that requirements office personnel should give to requests before proposals have been received is: "You'll have to ask the contracting officer about that. He/she is the only person who can authorize the release of any information."

2. Procurement Office

- a. *General.* Persons within the procurement office must exercise judgment in releasing information. The general rule is: If the information requested will give the requestor an unfair advantage over other prospective offerors, provide the information to all offerors in an amendment to the solicitation.

Following are guidelines on three kinds of information requests commonly received from persons outside the Postal Service before receipt of proposals.

(1) Background information on a potential offeror

Guideline: DO NOT DISCLOSE. The disclosure of certain business information is a criminal offense (18 U.S.C. 1905).

(2) If the solicitation is for a follow-on contract, identification of the incumbent contractor

Guideline: DISCLOSE. This is a matter of public record.

(3) Information as to whether the incumbent contractor intends to submit a proposal

Guideline: DO NOT DISCLOSE. Any such information you give out before receipt of proposals is purely conjecture or hearsay on your part. If the solicitation is for construction, you *may* provide a source list (those to whom you sent, or who requested, a copy of the solicitation) to any interested parties. You may not provide a source list for supplies or services. (Note: After receipt of proposals, you are strictly forbidden to give out any information that would characterize the number or content of proposals or relative standing of any one proposal as opposed to another. See PH 4.1.2-VII.)

- b. *Technical Requests.* If the request deals with a technical question, contact the requirements office to determine its validity. Based on that determination, decide if an amendment should be issued (see PM and PH 4.1.2.i). It is a good idea to have the offeror formalize the question in writing to ensure that all concerned have a clear understanding of the perceived problem.

Reminder for Postal Service Personnel

You may use the sample for this procedure, "Reminder on Release of Preaward Information," to remind requirements office personnel and other Postal Service employees involved in the preaward process of their obligations to preserve the integrity of the Postal Service procurement system.

VII. Handling Information Requests About Proposals (4.1.2.k.3)

All Postal Service employees should answer information requests about proposals by stating that it is a serious violation of Postal Service policy to give out any information after proposals have been received.

Do not give out any information, including—

1. How many proposals were received.
2. Whether discussions or negotiations are under way with any of the offerors.
3. When the Postal Service will make award.

Discussion: There is no prohibition against providing an estimated award date, but it is generally better not to. You undoubtedly have a milestone for date of award; however, it is only a target date. Since you do not have control over the entire award process, it is best to merely say that the Postal Service fully intends to make award before the proposal acceptance period expires.

4. Who submitted proposals.

Discussion: You may not disclose the identity of *any* offeror; however, you may provide a mailing list (those to whom you sent or who requested a copy of the solicitation).

You can only add that, at the time of award, all offerors will be given award information promptly.

To discourage information requests from offerors accustomed to a public bid-opening environment, you may include a statement like the following in the solicitation in Section K, Solicitation Notices and Provisions:

Before the time of award, all Postal Service employees are prohibited from releasing any information to any person concerning the character, content, or number of proposals received by the Postal Service. At the time of award, all offerors will be provided with award information promptly.

4.1.3 Receipt of Proposals

I. Proposal Handling

Safeguarding

Proposals contain confidential information and should be treated accordingly, both before and after they are opened by authorized Postal Service personnel. The following guidelines apply:

- Never leave a proposal on a desktop unattended.
- Always place proposals in a locked safe immediately upon receipt, and leave them there until you open them.
- Always secure opened proposals in a locked file or safe.

Opening and Recording

1. Immediately upon receipt, mark the envelope of the proposal with the date and time of receipt.
2. When the time specified in the Request for Proposals has elapsed, open the proposals promptly and prepare a record of proposals using the Accelerated Procurement Documentation System (APDS).

The contracting officer may designate an employee to open and record proposals, but the designation should be in writing and should state specific ground rules. The sample for this procedure, "Memorandum Designating an Employee to Open Proposals" (or a variation of it), can be used for this purpose.

II. Administrative Review of Proposals

As part of recording proposals (see PH 4.1.3-I, above), the contracting officer or designee should complete an administrative review of each proposal and document the findings. At a minimum, the following items should be checked:

1. Is the proposal signed by an authorized company official?
2. Is the proposal timely?
3. Did the offeror complete all fill-ins, required executions, representations, and certifications?
4. Did the offeror accept all solicitation terms and conditions?
5. Is the proposal in the proper format?
6. Did the offeror adhere to proposal page limitations, if any?

If the answer to any of these questions is no, you should evaluate the circumstances, with the advice of counsel, and determine whether it is in the Postal Service's interest to continue to evaluate the proposal.

III. Deciding Whether to Accept Late Proposals and Modifications (4.1.3.d)

You must open a late proposal (or proposal modification) provided the award has not been made or the solicitation has not been cancelled *and* may accept it if at least one of the following conditions is present:

1. The late proposal is the only proposal received; *or*
2. You determine that consideration of the late proposal will be in the Postal Service's interest. To expedite this determination, it may be appropriate (unless the determination is otherwise obvious) to evaluate the proposal to determine whether it would be in the Postal Service's interest to consider it.

It is generally advisable to consider a late proposal under the following circumstances:

- The proposal was timely sent by a method calculated to reduce the likelihood of tampering (such as Express Mail or registered or certified mail).
- The reason the proposal was late is mishandling after receipt at the Postal Service, *or*
- The proposal offers a significant benefit in cost, quality, or technical characteristics.

It is generally *not* advisable to consider a late proposal under the following circumstances:

- Consideration would delay the evaluation process.
- The proposal is extremely late, so that giving it consideration would give offerors no incentive to be timely on future solicitations and would undermine the integrity of the Postal Service procurement system.

4.1.4 Evaluation of Proposals

I. Overview

Evaluation consists of two parts, which are generally performed separately by personnel working under the direction of the contracting officer. One part is evaluation of the technical aspects of the proposal; the other is evaluation of the cost or pricing aspects.

1. *Evaluation of the Technical Aspects of the Proposal.* Unless a product or service does not have any technical complexity, the contracting officer will assemble a group of evaluators who together have the expertise to make technical judgments on the adequacy of the proposals as submitted (see PH 2.1.6-VII). The contracting officer must retain control of the activity of this group and ensure that the process is documented as outlined in PM 4.1.4.c.
2. *Evaluation of the Pricing or Cost Aspects of the Proposal.* The contracting officer must maintain an active role in this evaluation task, relying on contract specialists, price analysts, and auditors as necessary to perform individual tasks and make

preliminary judgments on the adequacy of the pricing or cost aspects of the proposal. Guidance is provided in PM and PH 5.3.

II. Technical Evaluation Steps (4.1.4.c)

Following is a summary of the major steps to be undertaken during the technical evaluation process.

1. Briefing

Upon receipt of proposals the technical evaluation panel director, in association with the contracting officer, should brief the evaluation panel members. The briefing agenda should cover:

- a. The number of proposals received;
- b. Evaluation ground rules;
- c. Schedule of evaluation events;
- d. Evaluation procedures, including documentation requirements;
- e. Key solicitation terms and conditions and key specification contents;
- f. Evaluation criteria; and
- g. Proposal format.

When the briefing concludes, evaluations can begin.

2. Initial Scanning of Proposals

Evaluators should first scan each proposal to get a feel for organization, content, and style. This will facilitate detailed reading. How long this will take depends on proposal size, but it should not take long.

3. Detailed Reading and Strong Points/Deficiency Documentation

Next, evaluators should read each proposal carefully, using the evaluation criteria standards contained in the solicitation as a checklist. Each evaluator should carefully document all instances where a proposal either exceeds a standard (strong point) or fails to meet a standard (deficiency), and then note why. The evaluator should also note mistakes and ambiguities, or the need for clarification. All documentation should be organized and referenced by proposal part (volume, chapter, section, page number, and so forth) and by evaluation standard number.

Upon finishing the relevant proposal segment the evaluator should write a description of any strong points and deficiencies noted. When the entire proposal has been read, and all deficiencies documented, the biggest part of the evaluation is finished.

4. Summarization of Findings

Upon completing the descriptions for each relevant proposal segment, the evaluator should summarize the strong points and deficiencies of the proposal as a whole. Then, the evaluator should analyze the risks associated with the proposal, taking into account the relative importance of the subject matter and the evaluation criteria to which the deficiencies relate. Finally, to complete the individual evaluation of the proposal, the evaluator should review the scoring guidance and assign the proposal a score.

5. Evaluation Panel Meeting

The technical evaluation panel director should lead a discussion of each proposal after all individual evaluations have been completed. A congenial, open atmosphere is important; the panel director must try not to suppress dissenting opinions and must avoid prejudicial behavior.

The goal of the meeting is reaching an evaluation panel consensus — a team position — on the merits and defects of each proposal, relative to the evaluation criteria. Consensus means general agreement, not complete agreement on all points. Panel members must be aware of the need to reach reasonable compromises, since complete agreement on all points under consideration is highly unlikely.

III. Technical Evaluation Documentation (4.1.4.c)

In any competitive procurement there is the potential for a protest. Unsuccessful offerors often are innovative in asserting grounds for their protests. The best defense against a protest is thorough documentation and strict adherence to the solicitation's evaluation guidelines. A quality control review of the evaluation panel's documentation is vital.

Standard formats for evaluation documentation help in ensuring thoroughness and consistency. They also facilitate the evaluation process because they minimize evaluators' uncertainty about documentation requirements. What follows is a description and illustration of formats that may be adapted to reflect the complexity and sensitivity of the source selection.

1. Individual Evaluator's Documentation

- a. *Deficiency Report Form.* A Deficiency Report (see Format 1 for this procedure) should be completed for each instance in which a proposal fails to meet a standard. The evaluator should identify the subject area and item (if applicable), the evaluation criterion, and the standard being assessed. The evaluator should explain why he or she believes the standard has not been met and what the offeror must add, delete, or change in its proposal to bring it up to standard. The evaluator should then explain the potential impact on contract performance if the deficiency is not corrected.
- b. *Strong Point/Deficiency Summary.* When the evaluator has finished reading a proposal all findings should be summarized on a Strong Point/Deficiency Summary (see Format 2 for this procedure). In addressing strong points, the evaluator should briefly explain how the standard has been exceeded and how the superiority will be useful to the Postal Service. Deficiencies are merely summarized briefly.
- c. *Risk Assessment.* Using a Risk Assessment format (Format 3 for this procedure), the evaluator categorizes risk—the likelihood that the offeror cannot fulfill the terms of the contract—as high, moderate, or low.

HIGH. Unlikely to result in successful performance. Quality, schedule or cost likely to be unacceptable even with special efforts by the contractor and unusually intense contract administration by Postal Service.

MODERATE. Potential for unacceptable quality, schedule, and/or cost performance by the contractor. However, special efforts by the contractor and close Postal Service monitoring can overcome these difficulties.

LOW. Little potential for failure in quality, schedule, or cost performance. High probability of success. Normal contractor effort and Postal Service contract administration can overcome any difficulties.

The risk assessment reflects the evaluator's professional judgment. Careful consideration of the nature of the deficiencies and where they occur is essential. If uncertainties about whether the contractor will meet the schedule, performance, or quality requirements of the contract cannot be resolved after discussions, the proposal should be downgraded or eliminated from further consideration.

- d. *Individual Evaluation Score Summary.* The last item the evaluator should complete is the Evaluation Score Summary (Format 4 for this procedure). The evaluator should assign the appropriate score to the proposal based on the risk assessment and the scoring guidance. The score can be either a number or an adjective, depending on the system preferred by the contracting officer.

All proposal evaluation documentation should be signed, dated, and delivered to the director of the technical evaluation panel.

2. *Evaluation Panel Documentation*

The evaluation panel must reach a consensus on the deficiencies, strong points, risk, and score for each offeror. If there are unresolvable differences the director makes the decision. There should be no dissenting reports.

The following documentation is generally necessary:

- a. *Deficiency Report.* A report reflecting the panel consensus must be prepared for each deficiency. Use words from one of the individual evaluator's Deficiency Reports if they reflect the consensus.
- b. *Strong Point/Deficiency Summary.* This summary reflects the consensus on strong points and deficiencies.
- c. *Risk Assessment.* This document reflects the consensus on the risk associated with the offeror.
- d. *Evaluation Score Summary.* This document presents the evaluation panel's consensus on the score to be assigned the offeror.

For each of the above reports, a separate document (in the case of the Deficiency Report, a separate set of documents) must be prepared for each offeror and signed by the technical evaluation panel director. The Panel must provide the contracting officer all summary documentation and provide other documentation to the contracting officer upon request.

3. *Evaluation Panel Report*

This report has two parts.

- a. *Part I.* This part is a narrative summary of the conclusions that form the basis for the consensus scores, and is developed by the evaluation panel. It should include a summary of the strong points and major deficiencies of each offeror's proposal. The summary evaluation panel documentation for each offeror (see 2 above) should be included as an individual appendix, along with a copy of Section M of the solicitation. The evaluation standards need not be included. In addition to the responsibilities enumerated under Part II of the report, the contracting officer is ultimately responsible for validating the technical

evaluation results and ensuring conformance with evaluation criteria and PM requirements.

- b. *Part II.* This part is developed by the contracting officer. It covers the findings of the price/cost evaluation panel, presenting a comparative matrix of the price/cost proposals and including the Price Analysis Reports for each offeror as appendices.

The Evaluation Panel Report must be supplemented as necessary after best and final offers (BAFOs) are reviewed, to address any changes in the evaluation results.

4.1.5 Contractor Selection and Award

I. Special Considerations—Rejection of All Proposals (4.1.5.e)

If you decide to reject all proposals and cancel the solicitation, you should document your decision in detail. At this point in the process, offerors have incurred full proposal preparation costs, and a cancellation is likely to cause more ill will now than it would have during the first or second week after the solicitation was issued. If the reasons for cancellation should have been evident earlier in the solicitation process (for example, inadequate specifications), your documentation should address the question of why the solicitation was not cancelled earlier.

You should send notice of your cancellation decision to all firms that received a copy of the solicitation, not just to those that submitted an offer.

See also PH 4.1.2-V, Cancelling a Solicitation.

II. Deciding Whether to Make Award Without Discussions (4.1.5.f)

You may not make an award without discussions unless the contracting officer determines that at least one initial proposal evidences technically acceptable practices and that (on the basis of either adequate price competition or accurate cost data) all proposals together ensure the Postal Service of fair and reasonable prices.

You may not delegate this determination to anyone else.

Discussion versus Clarification

The most distinctive difference between discussion and clarification is that in clarification, which focuses on eliminating minor irregularities in a proposal, the offeror is never given the opportunity to revise its proposal. Discussion, which focuses on larger issues, does allow the offeror to revise the proposal.

When making an award without discussion, you may communicate with one or more offerors for the purposes of clarification. Some examples of communications made for clarification are those that take place when:

- A signature is lacking on one or more of the solicitation documents;
- A block on a representation or certification has not been checked;

- The appropriate number of copies of a solicitation document was not returned (you may waive the requirement rather than seek clarification); or
- Receipt of a solicitation amendment was not acknowledged.

See PM and PH 4.1.6 for further treatment of communication with offerors for clarification purposes.

When Award Without Discussions Is Appropriate

When pricing and price-related considerations are most important, you are more likely to be in a position to make an award without discussions. These are situations in which the items or services being bought are commercially available, and you believe that the requirement is well-defined in the solicitation.

Similarly, if one proposal is evidently superior, clear in its terms, acceptable in all aspects, including price reasonableness, and unlikely to be improved through discussions and BAFOs, you may want to award on the basis of initial proposals, without discussions. *Note, however,* that whenever you suspect a misunderstanding, even if you believe the requirement to be well-defined, you should not hesitate to hold discussions. A few hours spent before the award may save endless hours of Postal Service time and money after it. Further, whenever you believe that discussions and negotiations would be likely to result in improved final offers, there should be no hesitation to engage in discussions and negotiations.

Some indications that discussions are warranted, even when award will be based on price and price-related factors, are—

- A wide variation in pricing proposals;
- A conflict between the solicitation and the terms or conditions of one or more proposals; and
- Unreasonable prices in all proposals.

III. Making an Award With Discussions (4.1.5.g)

When Award With Discussions Is Appropriate

When price and price-related factors are not the most important basis for award, you are most likely to need detailed communications with offerors to discuss factors related to quality. However, the need for discussions may become evident in virtually any preaward situation when discrepancies between offers and the solicitation or specifications (price or otherwise) indicate ambiguity in the solicitation.

Purpose of Discussions

A solicitation communicates to offerors what the Postal Service wants. If proposals do not respond with what is wanted, you will need to hold discussions. If these discussions do not demonstrate that all requirements are understood and achievable, further negotiations are required. Discussions are also necessary when the pricing of the proposals under consideration does not seem to be the best pricing obtainable. Discussions give the Postal Service an opportunity to describe proposal deficiencies to offerors in the competitive range, and then elicit best and final offers (BAFOs) in which the offerors can change or substantiate their proposals. Another key purpose of discussions is to resolve uncertainties and suspected or known mistakes in a proposal. The Postal Service can ask the meaning of unclear passages, note the answers given, and ask for written clarification in the BAFO.

IV. Determining the Competitive Range (4.1.5.g.2)

The Objective

If you conduct discussions at all, you must conduct written or oral discussions in competitive negotiated procurements with all offerors who submit proposals within a competitive range. The contracting officer must determine which proposals are in the competitive range after evaluating all proposals received; this responsibility may not be delegated. The competitive range must include all proposals that have a reasonable chance of being selected for award.

Procedure

The competitive range determination is based on the evaluation of price or cost as well as the findings of the technical evaluation panel. You must check the Evaluation Panel Report for thoroughness and clarity, conformance with the policy and evaluation criteria, and supportability. Once satisfied that the report is sufficient, you should compare the offerors, and decide which, if any, do not have a reasonable chance of being selected for award. You should take into account the seriousness of the deficiencies in the low-scored proposals, the extent of proposal revision necessary to improve the proposals, and the diligence and competence of the offerors, as reflected in the nature of the deficiencies. As a courtesy on solicitations with lengthy evaluation time frames, advise offerors when they have been eliminated from the competitive range. You can make an exception when award is imminent and all offerors will soon be notified of an award.

Considerations in Making Your Determination

Some reasons for which you may decide not to include a proposal in the competitive range are as follows:

1. The proposal does not reasonably address the essential requirements of the solicitation.
2. A substantial technical drawback is apparent in the proposal, and sufficient correction or improvement would require an entirely new technical proposal.
3. The proposal contains major technical or business deficiencies or omissions, or out-of-line prices or costs, which initial or continuing discussions with the offeror could not reasonably be expected to cure. (Before including an offeror in the competitive range, it will be necessary to determine the reasonableness of the price or cost without the benefit of discussions with the offeror.)

In making your determination, remember that *when in doubt as to whether a proposal is in the competitive range, include it.*

Documentation

The competitive range determination must be made in writing, signed by the contracting officer, and maintained in the official contract file.

V. Conducting Discussions (4.1.5.g.3)

Format

Discussions must be conducted separately with each offeror in the competitive range (see PM 4.1.5.g.2 and PH 4.1.5-IV). They may be conducted—

1. In person at the Postal Service or the offerors' plants;

2. By teleconference; or
3. In writing, through letters posing specific questions to the offerors and inviting written replies.

In deciding on the format to use, consider the time available, the expense and administrative limitations, and the size and significance of the procurement. In a competitive situation, you can often rely on market forces—in lieu of price/cost discussions—to provide you with a fair and reasonable price.

Guidelines for the various formats are provided below:

1. Oral Discussions (Face-to-Face or Teleconference)

Set aside whatever time is necessary to discuss deficiencies, resolve uncertainties, and resolve mistakes. Discussion time need not be the same for all offerors.

Postal Service attendees should be limited to:

- The contracting officer, or the contracting officer's representative, who will conduct the meeting;
- The technical evaluation panel director, who is responsible for explaining deficiencies and responding to questions;
- Other attendees needed to assist in the discussions or answer questions.

An agenda of discussion items should be prepared and provided to offerors sufficiently in advance of discussions to enable them to prepare adequately. The agenda should include a complete description of each proposal deficiency. Before each discussion session, the contracting officer should review the agenda and the discussion ground rules with all Postal participants. Careful preparation is essential.

Communication is the objective of discussions. The contracting officer should establish a cordial, businesslike environment, rather than a courtroom setting for witness examination. The purpose of the discussion should be stated at the outset, along with the specific points to be covered.

2. Written Discussions

Discussions may be conducted by exchange of letters. However, as this process can be cumbersome and time-consuming, and does not allow for any interchange, it should be used only when what is at issue is relatively cut-and-dried. Face-to-face discussions are generally best, supplemented by written materials, such as the discussion agenda. If written discussions are used, all communications sent to the offerors must be signed by the contracting officer.

Ground Rules

1. Do not tell offerors how to correct deficiencies; however, you may tell offerors specifically what your requirements are and what is necessary and desirable to fulfill them. The source selection process is a competition, and you must be fair to competing offerors. Do not coach an offeror to help it bring its proposal up to the level of competing offerors' proposal (leveling), and do not give an offeror information out of another proposal (transfusion). You should not conduct an auction ("offeror X's price is \$\$ lower than your price" or "you must drop your price by \$\$ in order to be further considered").

You are encouraged during discussions to reach a tentative agreement on all elements of the contract with the exception of price. The purpose of these agreements is to assure that the offeror's final price proposal is based on contract terms and conditions and specification interpretations that are in accord with the Postal Service's best interests. Although you will engage in discussions and some negotiations about the pricing, generally the final pricing is reflected in an offeror's Best and Final Offer (BAFO). Subsequent to final source selection, further negotiations may be conducted if necessary to eliminate any remaining deficiencies or price reasonableness uncertainties. However, changes cannot be made at this stage that would have affected the basis for contractor selection.

Answer questions aimed at helping an offeror understand *why* its proposal is deficient, and those aimed at finding out *what* it must do to correct it. In those situations where offerors are responding to performance of functional type specification, all may be offering slightly different designs or solutions to your requirement. In such cases, you may tell offerors what to address in their individual proposals to make their offers more desirable.

2. *Under no circumstances may you advise offerors of their relative standing or tell them how their proposals compare with others.* Simply focus on the proposal under discussion.
3. Do not change a deficiency finding on the basis of oral statements made during discussions. You may agree on the solution to the deficiency, but you must emphasize that the solution must be documented in the BAFO. Do not make changes in proposals on the basis of written materials provided by the offeror during discussions. All changes must be documented in BAFO submissions.
4. *Make sure* the offeror understands that any oral or written explanations or other information provided to the Postal Service during discussion sessions must be documented in the BAFO to be considered.
5. Bring suspected mistakes to an offeror's attention, but without disclosing information about other offerors' proposals.
6. Never compromise the competitive environment by giving one offeror the idea that it will win if it makes certain concessions or changes. Always specify that similar discussions are being held with other offerors and that the opportunity to submit a BAFO will enable each offeror to enhance its own proposal.

VI. Requesting and Evaluating Best and Final Offers (BAFOs) (4.1.5.g.4)

The Request

Upon conclusion of discussions with all offerors in the competitive range you must give each offeror remaining in the competitive range a chance to submit a best and final offer. All BAFOs must be due at the same date and time. The purpose of the BAFO is to permit the offerors to:

1. Confirm and document the specific agreements on contract terms and conditions and specification interpretations that have been discussed previously.
2. Improve their proposals by eliminating deficiencies, uncertainties and mistakes.
3. Make any other changes they desire; and

4. Submit a final price.

BAFO instructions should tell offerors to make changes in their proposals on a page-substitution basis. This will better enable the evaluation panel to determine what changes have been made. In other words, if the information to be changed appeared on page 10 of the original proposal, the offeror should be told to submit the changes on a page "10-BAFO". If the changes require the addition of a page or two, the offeror should submit pages: "10-BAFO", "10A-BAFO", "10B-BAFO", and so on. New or modified text should be indicated by italics or some other form of highlighting. These practices will eliminate the confusion that results when an offeror submits a totally redone proposal document.

In addition, tell the offeror to submit an index of all deficiencies noted during discussions, by deficiency number, indicating on what BAFO page each is addressed. This will help the offeror ensure that all deficiencies are addressed, and will help the Postal Service in its final evaluation.

The request for BAFOs should also caution offerors against submitting entirely new proposals or making undocumented price reductions. Substantially changed proposals may give rise to additional uncertainties or deficiencies, with no opportunity for another round of discussion. In most cases, you should have excluded from the competitive range proposals so unacceptable as to require a massive revision.

You should prepare the BAFO request in letter format. Note that you must use the words "best and final offer" in the letter.

Evaluation Following BAFOs

The contracting officer must decide whether it is necessary to reconvene the technical evaluation panel to evaluate the BAFOs.

Following any BAFO evaluation, the contracting officer has the option of reopening written or oral discussions in accordance with PM 4.1.5.g.4(c). Situations that may be grounds for doing so include the following:

1. All BAFOs contain unacceptable provisions, so no award can be made based on them.
2. You realize that you failed to discuss exceptions to solicitation requirements with an offeror.
3. It comes to your attention that material information has been given to one offeror but not to others.
4. There are changes to the requirement being solicited.

Changes in the Requirement

When a change is made in the requirement after submission of BAFOs, the contracting officer may need to either reestablish the competitive range or initiate an entirely new solicitation. If the requirement is radically changed, resolicitation is in order. When the change will not affect the level of competition but will affect the determination of what constitutes an acceptable proposal, the competitive range should be reestablished. At this point all offerors who submitted proposals must be notified of the newly established competitive range.

Changes that involve only the correction of a minor mistake in the solicitation can be made without calling for another round of BAFOs.



VII. Best Value Analysis (4.1.5.g.5(a))

After holding discussions and formally requesting best and final offers in competitive situations, you will be in a position to select for contract award the best and final offer that is most advantageous to the Postal Service. However, the selection decision may not be cut and dried. Technical and other quality-related benefits must be weighed against price advantages in deciding which offer affords USPS the best overall value.

Sample Best Value Analysis

This procedure illustrates the value analysis process.

The Postal Service seeks to award a contract for equipment. Following several discussion sessions with three offerors in the competitive range, the negotiated results after submission of best and final offers are as summarized below:

<u>Offerors</u>	<u>Original Technical</u>		
	<u>Score</u>	<u>Original Offer</u>	<u>Best & Final Offer</u>
Firm A	76	\$250,000	\$265,000
Firm B	66	\$200,000	\$205,000
Firm C	50	\$215,000	\$210,000

Assume that technical responses in discussions and best and final offers improve all proposals proportionately. You can easily justify eliminating Firm C in comparison with Firm B because in Firm B you will be getting a better technical approach at a lower price, but the choice between Firms A and B is not so clear-cut. Is it worth paying \$60,000 more to get a proposal rated only a little higher? The answer will lie in the specifics of the requirement.

Below are two hypothetical situations that point to different award results.

Hypothetical Justification for Selecting Firm A

Among the reasons for the technical superiority of Firm A is a superior quality control program. You can rely on it with only random sampling techniques by Postal Service inspectors. In your memorandum of negotiation (see PM and PH 4.4.3) you cite previous contracts held by Firm A on which an "acceptable quality level" was maintained using the quality control system proposed. In contrast, Firm B has a reputation for quality control problems. On past procurements (which you enumerate in your memorandum of negotiation), an "acceptable quality level" was not maintained using the quality control system proposed, and 100 percent inspection by the Postal Service was necessary. With the aid of your quality assurance personnel, you estimate the difference in administrative and actual cost between random sampling inspection and 100 percent inspection. You estimate that cost to be approximately \$30,000 over the life of the contract, and in the memorandum of negotiation you explain how you arrived at the figure.

You also consider the type of tubing to be used. Firm A is proposing to use copper tubing; Firm B, stainless steel tubing. With the aid of your technical advisors, you estimate the life-cycle cost of replacement tubing under the two technical approaches, arriving at a differential of \$35,000 in Firm A's favor throughout the expected life of the equipment.

You justify your award to Firm A by your belief that the superiority of their technical approach, including quality control measures, will be most beneficial as a whole to the Postal Service, price and technical factors considered.

Hypothetical Justification for Selecting Firm B

Assume that the situation is the same as the one described in the preceding justification, except that the amount of tubing required for the equipment is much less and so the differential for copper versus stainless steel is only \$5,000. You see no other significant differences between the two technical approaches. You would justify your award to Firm B by explaining that Firm B's acceptable technical approach and proposed pricing structure, even with the anticipated need for 100 percent inspection by the Postal Service, will be most beneficial to the Postal Service on the whole.

Reflection of Comparability Adjustment Differentials in Evaluation Criteria

In both of the situations described above, comparability adjustment techniques were used to justify price reasonableness. It is important to note that you can use such techniques in proposal evaluation only if you have stated in the solicitation the Postal Service's intention to use them. In the above situation, for example, you would have stated a differential formula in the solicitation, making it clear to the offerors that, for purposes of evaluation only, an amount reflecting the additional life cycle cost of stainless steel tubing would be added to the offered price of firms offering stainless steel. (Alternatively, you could have sanctioned a preference for copper by making it a requirement of the Postal Service specifications.)

See PH 5.3.3-V for further discussion of comparability adjustment.

VIII. Planning for Negotiations (4.1.5.g.5(b))

Planning for negotiations should begin during proposal evaluation. A written plan that includes prenegotiation objectives should be completed and approved before actual negotiations start. This plan should be prepared for all negotiated procurement actions, including contract modifications, when the dollar value and complexity of the procurement warrant it. Once you have prepared your negotiation plan it must be submitted for approval to the contracting officer. If you are the contracting officer, you must submit your plan to your next supervisory level. Remember to allow sufficient time for review, discussion, and revision before the negotiations. Consider the complexity of the procurement when anticipating review time needed.

In instances where negotiations with multiple offerors are contemplated, either a separate plan for each offeror or a consolidated plan may be used.

Each written negotiation plan must include the pertinent elements shown in the exhibit for this procedure "Negotiation Plan—Outline." Issue-by-issue analysis is required in preparing the plan, although issue-by-issue negotiation is not. In many instances, agreement may be obtained on a bottom-line price without a detailed discussion of all elements.

The objective of any negotiation is to reach agreement. The negotiation plan is intended to assist in that goal by ensuring that the negotiator has clear objectives and is as well prepared as possible. Circumstances that arise during actual negotiations may warrant a change from the negotiation plan. Such changes, and the reasons for them, are to be addressed in the memorandum of negotiation (see PM and PH 4.4.3).

See PH 4.4.2 for negotiation preparation procedures.

CAUTION: Under the PM, discussions and BAFOs replace what has traditionally been referred to as "negotiations." Refer to the treatments of discussions in PM 4.1.5.c and 4.1.5.g.3 and in PH 4.1.5-III and 4.1.5-V.

IX. Timing of Award Notification (4.1.5.i)

You should transmit written notification of award on the same day as, but absolutely no later than the second working day after, contract award.

X. Conducting Debriefings (4.1.5.j)

Debriefings are conducted after award and are confined to a general discussion of the offeror's proposal. Its weak and strong points are described in relation to the requirements of the solicitation—not in relation to the other proposals.

You are required to debrief representatives of unsuccessful offerors only if you receive a written request to do so. However, since prompt and forthright debriefings tend to reduce protests, when you anticipate strong adverse reactions you may elect to debrief without a formal request. Bear in mind, though, that debriefing is a sensitive undertaking, and an improper debriefing might actually evoke a protest. The guideline for the procedure, "Debriefing Ground Rules," presents pointers that must be followed.

In a debriefing session, the contracting officer is the only person authorized to speak for the Postal Service. Other team members must *not* respond to any questions unless requested to do so by the contracting officer. All answers should be brief and to the point. If questions are not related to the proposal evaluation, the offeror must be advised that such questions are outside the scope of the debriefing.

4.1.6 Mistakes In Proposals

I. Resolving Minor Informalities or Irregularities

A minor informality or irregularity is one that —

1. Has no effect or merely a negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services; and
2. Can be corrected or waived without detriment to the other offerors.

Examples include:

- Failure to return the number of copies of proposals required by the solicitation;
- Failure to sign a proposal; and
- Failure to acknowledge receipt of an amendment to the solicitation.

As stated in the PM, minor informalities and irregularities may be resolved through clarification rather than discussion.

II. Resolving Apparent Clerical Mistakes

Examples of apparent clerical mistakes are:

- Obvious error in placing a decimal point;
- Obvious error in stating a prompt payment discount (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);

- Obvious reversal of the price f.o.b. destination and the price f.o.b. origin; and
- Obvious error in designating unit.

You may correct an apparent clerical error after obtaining clarification from the offeror. Mark the correction in the proposal with a brief note, the date, and your initials.

Checklist for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Comprehensive Checklist for Solicitation Preparation and Related Tasks

**COMPREHENSIVE CHECKLIST FOR SOLICITATION PREPARATION
AND RELATED TASKS**

Date Completed	N/A	
_____	_____	1. Receive requisition.
_____	_____	2. Log requisition using the COMPASS Requisition Register module; obtain control number.
_____	_____	3. Review requisition for completeness. Things to look for include the following:
_____	_____	a. request date
_____	_____	b. realistic delivery date
_____	_____	c. complete delivery address
_____	_____	d. name and telephone number of contact person
_____	_____	e. budget finance number
_____	_____	f. clear, accurate, complete, and not unreasonably restrictive purchase description, statement of work, or specification.
_____	_____	g. cost estimate
_____	_____	h. justification, if required
_____	_____	i. suggested sources
_____	_____	j. standards for responsibility evaluation
_____	_____	k. evaluation criteria if other than price and price-related factors are to be used in source selection
_____	_____	l. statement of funds availability
_____	_____	m. any necessary approvals
_____	_____	4. If the requisition is not adequate and the problems cannot be resolved by telephone, log it out and return it to the requestor with an explanation.
_____	_____	5. If the requisition is acceptable, send acknowledgment of receipt to requestor, along with an implementation plan (see PM 2.1.5).
_____	_____	6. Verify USPS cost estimate. Determine if the cost estimate is based on:

Checklist for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Comprehensive Checklist for Solicitation Preparation and Related Tasks (continued)

- | | | |
|-------|-------|--|
| _____ | _____ | a. prices paid for recent purchases of same or similar items in like quantities |
| _____ | _____ | b. catalog or market prices |
| _____ | _____ | c. comprehensive analysis of individual cost elements |
| _____ | _____ | d. vendor/contractor quotation |
| _____ | _____ | 7. If the request is for equipment or a supply item, check to see if the equipment or item is available from excess. For any item or service, verify that it is not available from the Workshops for the Blind or Other Severely Handicapped or under a mandatory national or regional contract or any indefinite delivery contract or ordering agreement. |
| _____ | _____ | 8. Obtain procurement history information. Determine: |
| _____ | _____ | a. source of last purchase |
| _____ | _____ | b. quantity, quality, delivery and price |
| _____ | _____ | c. whether performance was satisfactory and item/service was suitable for purpose acquired. |
| _____ | _____ | 9. Establish solicitation/contract folder. |
| _____ | _____ | 10. Determine the method of purchase: |
| _____ | _____ | a. unrestricted |
| _____ | _____ | b. restricted |
| _____ | _____ | c. minority business enterprise |
| _____ | _____ | 11. Determine type of contract: |
| _____ | _____ | a. fixed price |
| _____ | _____ | b. cost reimbursement |
| _____ | _____ | c. letter |
| _____ | _____ | d. time-and-material |
| _____ | _____ | e. labor hour |
| _____ | _____ | f. other (ordering agreement, and so forth) |
| _____ | _____ | 12. If a current wage determination for services estimated to exceed \$2,500 is not on hand, send request for it to the Department of Labor using SF 98. |

Checklist for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Comprehensive Checklist for Solicitation Preparation and Related Tasks (continued)

- | | | |
|-------|-------|--|
| _____ | _____ | 13. If applicable, obtain Procurement Technical Division approval for use of brand name or equal purchase description (over \$50,000). |
| _____ | _____ | 14. Determine whether or not it is feasible to purchase from minority business enterprises (MBEs). |
| _____ | _____ | 15. Evaluate the need to obtain technical data, patents, copyrights, or other rights in data so as to enhance competition in future procurements. |
| _____ | _____ | 16. Develop or complete the mailing list, including any known qualified MBEs. |
| _____ | _____ | 17. Issue a presolicitation notice to concerns on the mailing list, if appropriate (see PM A.3.3.c and PH 3.2.2). |
| _____ | _____ | 18. Submit synopsis to the <i>Commerce Business Daily</i> . |
| _____ | _____ | 19. Prepare solicitation using the Automated Procurement Documentation System (DGS) and Appendix A of the PM. |
| _____ | _____ | 20. Route solicitation to a higher-level procurement office and assigned counsel for any necessary reviews and approvals (see PH 1.5). Also ensure that any presolicitation notices required by PH 4.1.2-II have been processed. |
| _____ | _____ | 21. Issue solicitation. Send copies to requiring office for information and posting. Advise the requiring office that any interested parties should request a copy of the solicitation directly from the procurement office. |
| _____ | _____ | 22. Post the solicitation in the procurement office's public area. |
| _____ | _____ | 23. Issue any required amendments to the solicitation. |

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

POSTAL SERVICE COMMODITY AND SERVICE CODES

COMMODITY CODES

GUNS AND AMMUNITION

- 1005A - Guns-Firearms-Weapons-Revolvers
- 1305A - Ammunition-Bullets-Wad Cutters

VEHICLES, MOTOR VEHICLES, TRAILERS, AND CYCLES

- 23101 - Passenger Motor Vehicles
- 2310B - Ambulances
- 2310C - Buses
- 2310G - Law Enforcement Vehicles
- 2310I - Long Life Vehicles
- 2310J - Vans and Light Trucks
- 23201 - Trucks and Truck Tractors, Wheeled-Heavy
- 23301 - Trailers, Service
- 2330C - Mobile Home/Post Office
- 23401 - Motorcycles, Motor Scooters, Bicycles

VEHICULAR EQUIPMENT COMPONENTS

- 25101 - Cab, Body, and Frame Structural Components
- 25201 - Power Transmission Components
- 25301 - Brake, Steering, Axle, Wheel, and Track Components
- 25401 - Furniture and Accessories
- 2540A - Heaters and Components
- 2540B - Mirrors (Rear and Side View) and Brackets
- 2540C - Shock Absorbers and Components
- 2540D - Upholstery (Seats and Seat Covers)
- 2540E - Wiper Motors
- 2540F - Wiper Blades and Arms
- 2540G - Glass-Windshield-Window

TIRES AND TUBES

- 26001 - Tires and Tubes
- 26402 - Tire-Tube Rebuilding and Repair Materials

ENGINES

- 28001 - Engines, Turbines, and Miscellaneous Components

ENGINE ACCESSORIES

- 29101 - Fuel System Components
- 29201 - Engine-Electrical System Components

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

- 29301 - Engine-Cooling System Components
- 29401 - Engine Air and Oil Filters, Strainers and Cleaners
- 29901 - Engine Accessories, Miscellaneous
- 2990A - Exhaust System Components
- 2990E - Mufflers, Exhaust

MECHANICAL POWER TRANSMISSION EQUIPMENT

- 30101 - Torque Converters and Speed Changers
- 30201 - Gears, Pulleys, Sprockets, and Transmission Chains
- 30301 - Belting, Drive Belts, Fan Belts, and Accessories
- 3030A - Belting-Conveyor
- 30401 - Power Transmission Equipment, Miscellaneous
- 31001 - Bearings
- 32001 - Woodworking Machinery and Equipment

METALWORKING MACHINERY

- 34001 - Metalworking Machinery, Miscellaneous
- 3419J - Machine Tools, Miscellaneous
- 3419K - Key Duplicating/Cutting Machines
- 3419L - Lacer, Belt
- 3424N - Heat Treating Equipment, Metal
- 3426P - Metal Finishing Equipment
- 34331 - Gas Welding-Heat Cutting-Metalizing Equipment
- 3436A - Welding Positioners and Manipulators
- 34391 - Welding-Soldering-Brazing Supplies and Accessories
- 3441A - Bending and Forming Machines
- 3442A - Hydraulic and Pneumatic Presses, Power Driven
- 3443A - Mechanical-Presses, Power Driven
- 34441 - Manual-Presses
- 3445A - Punching-Shearing Machines
- 34461 - Hammers and Forging Machines
- 34481 - Riveting Machines and Equipment
- 3450A - Machine Tools, Portable
- 34551 - Cutting-Tools for Machine Tools
- 34601 - Machine Tool Accessories
- 34651 - Jigs-Fixtures-Templates, Production

SERVICE AND TRADE EQUIPMENT

- 3510A - Laundry and Dry Cleaning Equipment
- 35301 - Sewing Machines
- 3540A - Paper Balers
- 3540B - Parcel Post-Rewrap Equipment
- 3540F - Strapping Systems
- 3540G - Tying Machines

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

- 3540I - Cardboard Case Making Machines
- 3540J - Forming Machine, Carton or Trays
- 35501 - Vending and Coin-Operated Machines
- 3550G - SSPC-Self-Service Postal Center

POSTAL EQUIPMENT

- 35901 - NDCBU-Neighborhood Delivery and Collection Boxes
- 35907 - Mail Pouches-Canvas
- 35908 - Mechanical Mail Processing
- 3590A - Apartment House Mail Boxes
- 3590B - Base-Rotary, NDCBU
- 3590C - Post Office Boxes
- 3590D - City Delivery Carts
- 3590E - Combination Collection Boxes and Accessories
- 3590F - Containers-Parcel Post Shuttle
- 3590G - CO:OP Racks
- 3590I - Culling Machines
- 3590J - Distribution Rings (Parcel)
- 3590K - Electro/Mechanical-Mail Processing
- 3590P - Express Mail Convenience Center
- 3590Z - Dispenser, Ticket Machines
- 3611A - Canceling-Facing, Machines
- 3611B - Cancellers-Flat

PRINTING AND BINDING EQUIPMENT

- 36101 - Printing-Duplicating-Bookbinding
- 3610D - Copying Machines-Other Than Photocopy
- 3610Y - Photocopy Equipment
- 36111 - Industrial-Marking Machines

AGRICULTURAL MACHINERY AND EQUIPMENT

- 3750E - Lawn-Yard Equipment
- 3750I - Tractor-Lawn and Yard Type
- 3825A - Snowblower, Motorized
- 3825B - Sweeper-Powered, Motorized
- 3830A - Snowplows-Vehicles
- 3830B - Power Tailgates-Vehicles

MATERIAL HANDLING EQUIPMENT

- 39101 - Conveyors
- 39151 - Materials Feeders
- 39201 - Materials Handling Equipment (Non-self-Propelled)

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

- 3920C - Carts (Utility)
- 3920K - Trucks-Hand-Platform
- 39301 - Materials Handling Equipment (Self-Propelled)
- 39501 - Winches, Hoists, Cranes, and Derricks
- 3960A - Elevators-Escalators
- 39901 - Materials Handling Equipment (Miscellaneous)
- 3990C - Pallets-Skids

ROPE, CABLE, CHAIN, AND FITTINGS

- 4010A - Chain-Wire-Rope
- 4010B - Cable
- 4010C - Band Tying
- 4010D - Bailing Material
- 40201 - Fiber-Rope-Cordage-Twine
- 40301 - Fittings for Rope, Cable, and Chain

REFRIGERATION, AIR CONDITIONING, AIR CIRCULATING EQUIPMENT

- 4110A - Refrigeration Equipment
- 4120A - Air Conditioning-Equipment
- 41301 - Refrigeration and Air Conditioning Components
- 41401 - Fans, Air Circulators, and Blower Equipment

FIRE FIGHTING, RESCUE, AND SAFETY EQUIPMENT

- 42101 - Fire Fighting Equipment
- 42401 - Safety-Rescue Equipment

HEATING EQUIPMENT

- 43001 - Pumps and Compressors
- 44001 - Furnace, Steam Plant, and Drying Equipment

PLUMBING AND DISPOSAL EQUIPMENT

- 45101 - Plumbing Supplies and Accessories
- 45102 - Plumbing Fixtures
- 45201 - Space Heating Equipment and Domestic Water Heaters
- 45301 - Fuel Burning Units
- 45401 - Plumbing-Heating-Sanitation Equipment, Miscellaneous
- 4540B - Packer/Compactor, Trash Disposal
- 4540C - Container-Trash, Scrap Disposal
- 4610A - Water Purification Equipment
- 4630B - Sewage Treatment Equipment

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

PIPE AND HOSES

- 47101 - Pipe-Tube (Rigid)
- 4720A - Hose-Tubing (Flexible)
- 4730A - Hose-Pipe-Tube-Lubrication Fittings
- 48001 - Valves

VEHICLE MAINTENANCE EQUIPMENT

- 4910A - Automotive Repair Equipment
- 4910D - Engine Analyzer Equipment
- 4910G - Cleaning Equipment-Steam
- 4910J - Truck Washing Equipment
- 4910K - Wheel/Suspension/Alignment Equipment
- 4910M - Test Equipment, Vehicle Electrical Systems
- 4910S - Truck, Fork Lift/Tow, Vehicle Maintenance
- 49301 - Lubrication and Fuel Dispensing Equipment
- 4940A - Sprayer, Paint

HAND TOOLS

- 5110A - Hand-Tools, Edged, Nonpowered
- 5120A - Hand-Tools, Nonedged, Nonpowered
- 5130A - Hand-Tools, Power Driven
- 51331 - Drill Bit-Counterbores-Countersinks
- 51401 - Tools-Hardware-Boxes
- 52101 - Measuring Tools, Craftsmen's
- 52201 - Inspection Gages and Precision Layout Tools

HARDWARE AND ABRASIVES

- 53001 - Fasteners
- 53151 - Nails-Keys-Pins
- 53201 - Rivets
- 53301 - Packing-Gasket Materials
- 53351 - Metal Screening
- 5340A - Casters
- 5340B - Rollers
- 5340E - Bumpers-Rubber
- 5340G - Cabinet Hardware
- 5340I - Locks
- 53501 - Abrasive Materials
- 53551 - Knobs and Pointers
- 53601 - Coil-Flat-Wire Springs
- 53651 - Rings-Shims-Spacers-Standoffs

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

PREFABRICATED STRUCTURES AND SCAFFOLDING

- 54101 - Buildings-Prefabricated and Portable
- 54301 - Tanks-Storage/Other
- 5430C - Tanks, Gas
- 5430D - Tanks, Oil
- 54401 - Ladders-Scaffolding Equipment

BUILDING AND CONSTRUCTION MATERIALS

- 55001 - Lumber, Millwork, Plywood and Veneer
- 5610A - Asphalt-Cement Construction Materials, Bulk
- 5610B - Sand-Lime Construction Materials, Bulk
- 5610C - Gravel-Crushed Stone Construction Materials, Bulk
- 5610D - Construction Materials (Bulk), Miscellaneous
- 5620A - Glass Building Materials
- 5620B - Tile (Floor and Wall)
- 5620S - Brick/Block/Stone
- 5630A - Pipe-Conduit, Concrete-Clay
- 5630C - Pipe-Drain Tile
- 5630E - Pipe-Plastic, PVC
- 56401 - Wallboard-Paper-Insulation
- 56501 - Roofing-Siding
- 56601 - Fencing-Gates
- 56701 - Architectural-Metal Products

COMMUNICATION EQUIPMENT

- 58051 - Telephone-Telegraph
- 58101 - Communication Security Equipment and Components
- 58151 - Teletype-Facsimile
- 58201 - Radio-Television
- 58301 - Intercommunications-Public Address Equipment
- 58351 - Sound Recording and Reproducing Equipment
- 5895A - Communication System, Address, Lecture Equipment
- 5895B - Modem (Non ADP)-Communication Equipment

ELECTRICAL AND ELECTRONIC EQUIPMENT COMPONENTS

- 5905A - Resistors
- 5910B - Capacitors
- 5915C - Filters-Networks-Electrical and Electronic
- 5920D - Fuses-Lightning Arresters-Fuse Holders/Boxes
- 5925E - Circuit-Breakers
- 5930F - Switches-Electrical and Electronic
- 5945K - Relays-Solenoids
- 5950L - Coils-Transformers-Electrical and Electronic

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

- 5955M - Crystals, Piezoelectric-Electrical and Electronic
- 5960N - Tubes, Electron and Associated Hardware
- 5961P - Semiconductor Devices and Associated Hardware
- 5962Q - Microcircuits
- 5965R - Headsets-Handsets-Microphones-Speakers
- 5970S - Insulators-Insulating Material
- 5975T - Hardware-Supplies-Electrical and Electronic
- 5977U - Electrodes-Contact Brushes
- 5985V - Antennas, Waveguide, and Related Equipment
- 59991 - Miscellaneous Other Electrical/Electronic Equipment Parts
- 5999Y - Printed Circuit Boards-PCB

ELECTRICAL EQUIPMENT

- 6105A - Motors
- 6110B - Electrical Control Equipment
- 6115C - Generators and Generator Sets
- 6120D - Transformers-Distribution and Power Station
- 6130F - Power Supply
- 6130G - Battery-Charger
- 6135J - Battery-Dry Cell
- 6140L - Battery-Automotive, Storage
- 6140M - Battery-Industrial (Heavy Duty and Fork Lift)
- 6140N - Battery-Rechargeable (Nickel/Cadmium)
- 6145P - Wire-Cable, Bulk
- 6210A - Indoor-Outdoor Lighting Fixtures
- 6220B - Lights-Fixtures-Vehicle
- 6230D - Emergency Lighting/Power Equipment-Portable and Hand
- 6240E - Lamps
- 6250F - Ballasts-Lampholders-Starters, for Fixtures

SECURITY CONTROL EQUIPMENT

- 6350A - Alarm-Signal-Security Detection Systems
- 6350E - Fire Alarm Equipment-Alarm and Signal Systems
- 6350F - Access Control System
- 6350L - X Ray Equipment, Miscellaneous
- 6350M - Closed Circuit TV System

MEDICAL EQUIPMENT

- 6510A - Medical Dressing Materials
- 6515B - Medical and Surgical Instruments
- 6515C - Audiometer
- 6530M - Medical Furniture Equipment
- 6545P - First Aid Cabinets

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

INSTRUMENTS AND LABORATORY EQUIPMENT

- 6620A - Instruments-Engine
- 6625B - Electrical and Electronic Measuring and Testing
- 6630C - Chemical Analysis
- 6635D - Physical Properties Testing Equipment
- 6640E - Laboratory Equipment and Supplies
- 6645F - Time Measuring and Recording
- 6650G - Bar Code-Reader
- 6650I - Bar Code-Sorter
- 6650J - Laser-Hand Held
- 6650K - Microscopes
- 6650L - OCR-Channel Sorter
- 6650M - Optical Character-Reader
- 6650N - Scoring, Test, Machine
- 6665Q - Hazard Detecting
- 6670A - Scales-Electronic
- 6670B - Scales-Mechanical
- 6670R - Scales and Balances
- 6675S - Drafting-Surveying-Mapping
- 6680I - Air-Testing/Measuring Equipment
- 66802 - Flow-Liquid-Gas
- 6680T - Liquid and Gas Flow, Mechanical Motion Measuring
- 6685U - Pressure, Temperature, Humidity Measuring Control
- 6695V - Combination and Miscellaneous

PHOTOGRAPHIC EQUIPMENT

- 6710A - Cameras-Motion Picture
- 6720B - Cameras, Still Picture
- 6730I - Computer Image-Projector
- 6730C - Photographic Projection Equipment
- 6740D - Photographic Developing and Finishing Equipment
- 6750E - Photographic Supplies
- 6760F - Camera Accessories
- 6760G - Duplicator, Microfilm/Microfiche
- 6760J - Photographic Identification Equipment
- 6760M - Reader/Printer, Microfiche
- 6760N - Reader/Printer, Microfilm
- 6770P - Film-Processing

CHEMICALS, MISCELLANEOUS

- 6810A - Chemicals
- 6830D - Gases-Compressed and Liquified
- 6840E - Pest Control Agents and Disinfectants

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

- 6850G - Antifreeze-Chemical Specialties
- 6850I - Dog Repellant-Chemical Specialties

TRAINING AIDS AND DEVICES

- 69101 - Training Aids, Other
- 6910C - Amplifier, Power/Sound
- 6910E - Audio-Visual Special Effects Equipment
- 6910U - Training System, Audio Visual
- 69302 - Training Devices, Postal Mail Processing

ADP AND COMPUTER EQUIPMENT AND SUPPLIES

- 7010A - Systems Configuration, General Purpose
- 7010E - HVAC Energy Management System
- 70251 - Printing System
- 70252 - Recorder-Plotting
- 70253 - Telecommunications Unit
- 70254 - Terminal, Badge Reader
- 70255 - Terminal, Point of Sale
- 70256 - Terminal, Scale Input
- 70257 - Typewriter Systems
- 7025A - Input-Output-Storage, Devices
- 7025B - Data Entry System
- 7025R - Microfilmer Data Entry/Capture System
- 7025S - Microfilmer Computer Output
- 7025T - Modem-Digital Data
- 7025V - Optical-Scanners
- 7025W - Printer
- 7025Z - Printer-Laser
- 7030A - Software
- 7035A - Acoustical Covers/Silencing Equipment
- 7035B - Adapter, ADP
- 7035C - ADP Cleaning/Maintenance Equipment
- 7035D - ADP Testing/Analyzing/Monitoring Equipment
- 7035E - Burster, Form or Card
- 7035J - Decollator
- 7035K - EPROM Programmer Device
- 7035L - Graphics System, Controller
- 7035N - Printer-Bar Code
- 70401 - Punched Card-Equipment
- 70451 - Supplies

OFFICE FURNITURE

- 71101 - Non-Modular Office Furniture
- 71103 - Bulletin Boards

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

- 71104 - Postage Meter-Stand
- 71105 - Racks-Sack/Pouch
- 71106 - Racks-Tray Storage
- 71107 - Sack Examination Stand
- 71108 - Safes/Security Container
- 71109 - Stand-Folding, for Temporary Letter Case
- 7110C - Cabinets-ADP
- 7110D - Stools-Workroom
- 7110I - Vault Door Entrances
- 7110J - Cash Boxes
- 7110K - Cash-Stamp-Money Order Drawers
- 7110N - Counter Tops
- 7110S - Modular Office Furniture
- 7110T - Desk-Table-Lobby Furniture
- 7110V - Dividers, Steel-Letter Cases

CABINETS, LOCKERS, BINS, AND SHELVING

- 71251 - Cabinets, Lockers, Bins, and Shelving
- 7125D - Cabinets-Cafe Equipment
- 7125K - Cabinets-Tool and Parts
- 7125M - Cases-Key Storage
- 7125N - Cases-Mail (All Kinds)
- 7195D - Distribution Cases and Stands-Furniture and Fixtures

HOUSEHOLD FURNISHINGS

- 7210A - Household-Furnishings
- 7220B - Floor Coverings (Carpet, Tile, Rugs)
- 7230C - Draperies-Awnings-Shades
- 7240D - Containers-Utility, Household and Commercial
- 7290I - Furnishings, Household and Commercial (Miscellaneous)

FOOD COOKING, BAKING, AND SERVING EQUIPMENT

- 73101 - Food Cooking, Baking, and Serving Equipment
- 7310C - Cash Register
- 73201 - Kitchen Appliances
- 7320B - Ice Dispenser-Cafe Equipment
- 7320E - Microwave Oven
- 73301 - Kitchen Hand Tools and Utensils

OFFICE MACHINES

- 7420A - Calculators-Accounting Machines
- 7430B - Typewriters

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

- 7430C - Composing Machines
- 74351 - Office Information System Equipment
- 7435B - Word Processing System
- 7450B - Dictating Machines
- 7460C - Visible Record
- 7490A - Addressing Machine
- 7490C - Coin-Currency-Counting-Sorting Machines
- 7490F - Currency-Coin-Changer Machines
- 7490G - Dollar Bill Validators
- 7490I - Money Order Machines, and Related Equipment
- 7490J - Parcel Depositories
- 7490K - Postage Meters

OFFICE SUPPLIES AND DEVICES

- 75101 - Office Supplies
- 75201 - Office Devices and Accessories
- 7520A - Seals-Signs
- 7520B - Satchels-Straps
- 7530K - Stationery-Record Forms
- 7540L - Standard-Forms

RESALE ITEMS/MERCHANDISE

- 7490Z - Stamp Dispensers/Affixers
- 7510X - Stamp Catalogs
- 7510Y - Postage Stamps
- 7510Z - Envelopes-Embossed Stamped

PRINTING AND PUBLICATIONS

- 7610A - Books-Pamphlets
- 7640D - Maps-Atlases-Charts-Globes
- 7650E - Drawings-Specifications
- 7670F - Microfilm-Processed
- 7690G - Printed Matter, Miscellaneous

RADIOS-PHONOGRAPHS-TELEVISIONS

- 7730A - Radios-Phonographs-Televisions

CLEANING EQUIPMENT AND SUPPLIES

- 79101 - Floor Polishers-Vacuum Cleaning Equipment
- 79201 - Brooms-Brushes-Mops-Sponges

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

- 7920D - Cloths-Sweeping and Treated
- 7930I - Cleaning-Polishing Compounds and Preparations

PAINTING EQUIPMENT AND SUPPLIES

- 8000I - Brushes, Paint, Sealers, and Adhesives
- 8020Z - Paint-Artists', Brushes
- 8030Z - Sealing and Preservative Compounds

PACKAGING AND PACKING CONTAINERS

- 8105A - Bags-Sacks, Packaging and Packing
- 8105Z - Cushioned Mailing Bags
- 8110B - Drums-Cans, Packaging and Packing
- 8115E - Boxes-Cartons-Crates, Packaging and Packing
- 8115Z - Audio Cassette Mailer
- 8120F - Gas Cylinders-Commercial and Industrial
- 8125G - Bottles-Jars, Packaging and Packing
- 8130I - Reels-Spools, Packaging and Packing

AWNING AND RELATED ITEMS

- 8310A - Thread and Yarn
- 8330B - Leather (All Types)
- 8340C - Tents-Tarpaulins
- 8345D - Flags-Pennants

PERSONAL CLOTHING AND ACCESSORIES

- 8400I - Clothing, Individual Equipment, and Insignia
- 8460G - Briefcases-Luggage
- 8465J - Belts-Holsters
- 8510A - Disinfectants and Deodorants-Toiletries
- 8520B - Soap-Hand
- 8540C - Paper Products-Toiletry

AGRICULTURE ITEMS, MISCELLANEOUS

- 8720A - Fertilizers
- 8730B - Seeds-Nursery Stock

LIVE ANIMALS

- 8820Z - Dogs, Security Force

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

COMMODITY CODES (Cont'd)

FUEL AND LUBRICANTS

9110B	-	Coal
9130D	-	Gasoline
9140F	-	Diesel-Fuel
9140G	-	Kerosine
9140I	-	Fuel-Heating
9150I	-	Oils and Greases: Cutting, Lubricating and Hydraulic

MISCELLANEOUS MATERIALS

9310A	-	Paper (Printing)-Paperboard
9320B	-	Rubber-Fabricated Materials
9340D	-	Glass-Fabricated Materials
9340E	-	Plate Glass-Window
9500I	-	Metal Bars, Sheets, and Shapes
9530D	-	Bars-Rods, Nonferrous
9535F	-	Sheet and Coil-Aluminum
9535G	-	Sheet and Coil-Brass
9540I	-	Structural Shapes, Nonferrous
9640A	-	Forging
9640B	-	Castings
9999Z	-	Resale Items, No Other Code Assigned

SERVICE CODES

AE25B	-	Retail Equipment
AE35A	-	Electro Optics Character Recognition
AE35B	-	Mail Processing System
AE35C	-	Materials Handling Subsystem
AJ12A	-	Feasibility Studies
AJ15A	-	Hardware
AJ15B	-	Software
AS15I	-	Air Transportation
AZ15I	-	R&D, No Other Code Assigned
B000I	-	Contract Postal Unit
C032I	-	Woodworking
C034A	-	Fabricated Parts
C034C	-	Molded-Injection, Plastic Prod
C034D	-	Molded-Thermoform, Plastic Prod
C034E	-	Plating
C034F	-	Sheetmetal
C034G	-	Welding
C034J	-	Machine Shop Services, No Other Code Assigned
G0034	-	Recreation Services
G0062	-	Insurance-Life Programs

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

SERVICE CODES (Cont'd)

G0071	-	Insurance-Health Programs
G0083	-	Insurance, Other Than Life and Health Programs
G0995	-	Social Services, No Other Code Assigned
H1231	-	Quality Control, Testing and Inspection Services
J0231	-	Vehicle
J023B	-	Vehicle Painting
J023G	-	Vehicle Washing
J025C	-	Vehicle Parts
J025F	-	Vehicle Upholstering
J026E	-	Vehicle, Tire Recapping
J029A	-	Vehicle, Engine
J036C	-	Copier Equipment
J0391	-	Material Handling Equipment
J039B	-	Forklift Equipment
J041A	-	Air Conditioning Equipment
J0421	-	Fire Equipment
J042A	-	Fire Alarm, Control Systems
J042B	-	Fire Extinguishers-Recharge
J044B	-	Boiler Equipment
J045E	-	Heating Equipment
J045F	-	Plumbing Equipment
J045G	-	Sanitation Equipment
J0491	-	Vehicle Shop Equipment
J0581	-	Communication Equipment
J058A	-	Facsimile Equipment
J058D	-	Radio Equipment
J058E	-	Telephone-Telegraph, Equipment
J058G	-	Television and Television Equipment
J058I	-	Video Equipment
J0591	-	Electrical Equipment
J0592	-	Electronic Equipment
J059B	-	Motors, Electric
J059C	-	Tools, Electric
J059G	-	Postal Units, Self-Service
J059I	-	Printed Circuit Board-PCB
J063A	-	Alarm-Signal-Security Systems
J063B	-	Locks
J063C	-	Safes
J0661	-	Test Equipment, Maintenance/Repair/Rebuild
J0671	-	Photographic Equipment
J0701	-	ADP-Computer Equipment
J070A	-	Communication Equipment, ADP
J070I	-	Terminal, ADP
J0711	-	Furniture
J0712	-	Furniture, Painting
J0741	-	Office Machines
J074A	-	Audio/Visual Equipment
J074B	-	Calculator, Typewriter
J0791	-	Cleaning Equipment
M0001	-	Operation of Postal-Owned Facility

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

SERVICE CODES (Cont'd)

N034L	-	Metalworking Machinery
N035M	-	Neighborhood Delivery-Collection Box Units
N036G	-	Industry Machinery
N039K	-	Material Handling Equipment
N041B	-	Air Conditioning Equipment
N042E	-	Fire Equipment
N045F	-	Heating Equipment
N049J	-	Maintenance Shop Equipment
N058D	-	Communication Equipment
N063C	-	Alarm Signal-Security
N066I	-	Instruments, Lab Equipment
N070A	-	ADP Equipment
N074P	-	Office Machines
P1001	-	Surplus Excess Property, Preparation and Disposal Of
Q201A	-	Medical-General Health Care Services
Q401B	-	Nursing Services
R0421	-	Fire Systems
R0631	-	Security
R1101	-	Architect Engineering Services (Construction)
R2102	-	Architect Engineering Services (General)
R212A	-	Drafting Services-A/E
R213B	-	Inspection Services-A/E
R214C	-	Management Engineering Services-A/E
R301E	-	Facility ADP Management Services
R302B	-	Programming ADP
R302C	-	System Development and Analysis ADP
R302D	-	Software Maintenance ADP
R303A	-	Data Entry ADP
R4041	-	Survey, Land
R4111	-	Appraisal Real Property
R4181	-	Legal Services
R425A	-	Engineering (Except A/E)
R425B	-	Engineering Drafting
R425C	-	Engineering Prototype
R425D	-	Engineering Reverse
R425E	-	Engineering-Technical Studies
R4261	-	Communication
R4971	-	Personnel Support
R497A	-	Personnel Recruitment Employee
R497F	-	Personnel Test and Examination
R4981	-	Auctioneering
R5501	-	Organization, Administrative Studies
R6011	-	Materiel Management Inventory Storage
R6991	-	Safety Program
R701A	-	Advertising-Marketing
R701B	-	Exhibit Display Design
R701C	-	Marketing Sales Promotion
R7031	-	Financial Auditing Accounting
R7061	-	Logistics Support
R7101	-	Construction Management Services

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

SERVICE CODES (Cont'd)

S1101	-	Utilities
S2011	-	Sweeping-Treated Dust Cloth Services
S201C	-	Janitorial-Custodial Service
S201D	-	Window Washing Service
S203A	-	Cafeteria Service-Food Service
S203B	-	Catering-Banquet Services
S203C	-	Food Vending
S2051	-	Garbage-Trash Removal Service
S2061	-	Guard Services
S2071	-	Pest Control Extermination
S208A	-	Landscaping
S208B	-	Lawn Services
S208C	-	Planting-Trimming Tree
S2111	-	Security and Surveillance
S214A	-	Carpet Cleaning-Contract Cleaner
S2151	-	Warehouse Storage Services
S2181	-	Snow Removal-Salting
S219A	-	Asbestos Removal
S2211	-	Waste Removal (Hazardous)-Waste Oil Removal
T001C	-	Framing (Art, Pictures, Award Certificates, Etc.)
T001D	-	Graphic Art, Special Designs
T005A	-	Film Processing and Duplicating
T0062	-	Video Processing and Duplicating
T006B	-	Film Production
T007C	-	Microfilming
T0111	-	Publications-Printbinding
T012A	-	Label Printing
T012B	-	Letterhead-Stationery Printing
T012D	-	Postal Forms-Printing
T012E	-	Postal Maps-Printing
T012F	-	Posters and Placards-Printing
T012G	-	Prints-Blue Line, Black Line, (White) Sepia
T012J	-	Tags-Printing
T0131	-	Technical Manual Production
T0132	-	Technical Writing
T0121	-	Publications-Printing
U0001	-	Training Services
U009F	-	Videotraining Services
V1101	-	Freight and Transportation
V1221	-	Moving-Storage Transportation
V231A	-	Lodging Hotel/Motel Accommodations
V231B	-	Conference-Meeting Room Facilities
V231C	-	Travel Agent Services
W023X	-	Vehicle Hire, Long Term
W023Z	-	Vehicle Hire, Short Term
W036A	-	Copier, Photocopy Equipment
W036B	-	Duplicating Equipment
W039B	-	Material Handling Equipment
W049A	-	Maintenance Shop Equipment
W058B	-	Facsimile Equipment

Exhibit for PH 4.1.2-I, Solicitation Preparation and Related Tasks—Overview
Postal Service Commodity and Service Codes

SERVICE CODES (Cont'd)

W058C	- Teletype Equipment
W058D	- Telephone-Telegraph Equipment
W070A	- Data Entry Service-ADP
W070C	- Hardware-ADP
W070D	- Optical Scanners-ADP
W070F	- Software-ADP
W070J	- Time Sharing Service-ADP
W0711	- Furniture
W0741	- Office Equipment
W074C	- Microfilm Readers and Printers
W0791	- Cleaning Equipment
W0841	- Uniform Supply Service
Y0561	- General Trades Construction
Y0562	- Design/Built Construction
Y0563	- Electrical Construction
Y0564	- Mechanical Construction
Y0565	- Mechanization Construction
Y0566	- Site Preparation
Z0391	- Elevator/Escalator
Z056A	- Asphalt Surfacing
Z056B	- Carpentry
Z056C	- Carpeting
Z056D	- Flooring
Z056G	- Roofing
Z056K	- Concrete-Cement Work
Z056L	- Masonry
Z056M	- NDCBU Maintenance
Z056N	- Construction Services, No Other Code Assigned
Z056P	- Plumbing
Z056Z	- Fencing
Z0611	- Electric Power, Installation and Repair (Building)
Z080A	- Painting-Exterior/Interior
Z080B	- Painting-Flagpole
Z080C	- Painting-Parking Lot
Z080D	- Painting-Street Letter Boxes
Z0931	- Glass Replacement-Window

Sample for PH 4.1.2-II, Presolicitation Notifications
Notification of Solicitation Issuance

NOTIFICATION OF SOLICITATION ISSUANCE

TO:

FROM: Contracting Officer

SUBJECT: Solicitation No. _____

A solicitation for _____ will be issued on _____. Since a portion of this solicitation (see paragraphs _____) involves areas of interest to your organization, we are giving you the opportunity to voice any objection to its issuance.

If we have no response from you by _____, we will assume that you approve the issuance of this Postal Service solicitation.

Checklist for PH 4.1.2-III, Conducting a Preproposal Conference
*Preproposal Conference Topics***PREPROPOSAL CONFERENCE TOPICS**

The following list outlines possible topics and identifies the Postal Service representatives usually responsible for addressing them. Add other topics as needed.

1. Performance requirements, including technical objectives, reporting requirements, and schedules (*representative of the requesting office*). If included as a topic, fill in the following:

USPS representative _____

Attendance confirmed on _____ (date)

By _____

2. Solicitation terms and conditions--including, for a contract that will be negotiated, identification of the terms and conditions not subject to negotiation and discussion of the rationale that must accompany any proposed deviation from terms and conditions (contracting officer or contract specialist). If included as a topic, fill in the following:

USPS representative _____

Attendance confirmed on _____ (date)

By _____

3. Proposal structure and proposal submission requirements (*contracting officer or contract specialist*). If included as a topic, fill in the following:

USPS representative _____

Attendance confirmed on _____ (date)

By _____

4. Cost/pricing arrangements (*contracting officer or contract specialist, supplemented as necessary by cost analyst*). If included as a topic, fill in the following:

USPS representative _____

Attendance confirmed on _____ (date)

By _____

5. Proposal evaluation (*representative of requesting office*). If included as a topic, fill in the following:

USPS representative _____

Attendance confirmed on _____ (date)

By _____

Checklist for PH 4.1.2-III, Conducting a Preproposal Conference
Preproposal Conference Topics (continued)

6. Postaward administration--including performance monitoring, consent to placement of subcontracts, submission of invoices, etc. (*contracting officer or contract specialist*).

If included as a topic, fill in the following:

USPS representative _____

Attendance confirmed on _____ (date)

By _____

7. Other: _____

USPS representative _____

Attendance confirmed on _____ (date)

By _____

Checklist for PH 4.1.2-IV, Amending a Solicitation
Amendment Versus Reissuance

AMENDMENT VERSUS REISSUANCE

Conditions Favoring Amendment

_____ The need for the Postal Service requirements being solicited is truly urgent.

_____ Either the changes are minor--more editorial than substantive—and result in revisions to no more than half the pages of the solicitation.

or

The changes are substantive but affect a relatively small portion (no more than 20 percent) of the total number of pages.

Conditions Favoring Reissuance of the Solicitation

_____ The changes, both substantive and editorial, require revisions to most pages of the solicitation.

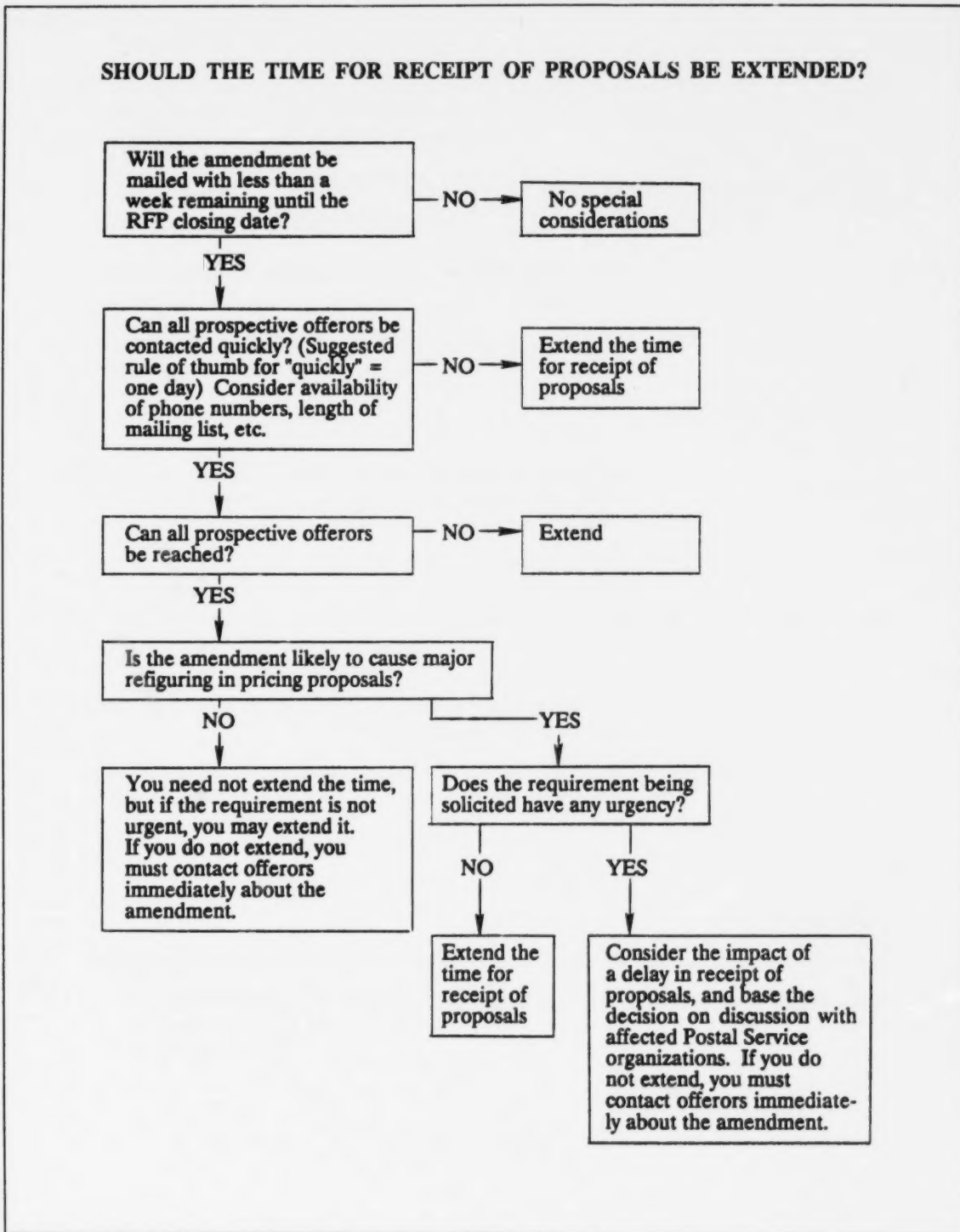
_____ The need for the Postal Service requirements being solicited is not urgent.

Instructions

If you decide to amend the solicitation, follow instructions in PM 4.1.2.i and PH 4.1.2-IV.

If you decide to cancel and reissue the solicitation, see PM 4.1.2.j and PH 4.1.2-V.

Decision Diagram for PH 4.1.2-IV, Amending a Solicitation
Should the Time for Receipt of Proposals Be Extended?



Sample for PH 4.1.2-VI, Handling Requests About Proposed Purchases
Reminder on Release of Preaward Information

REMINDER ON RELEASE OF PREAWARD INFORMATION

To:

From: Contracting Officer

You must give absolutely no preaward information to anyone outside the Postal Service, except as outlined in the Procurement Manual (PM) at 4.1.2.h and 4.1.2.k and the Procurement Handbook (PH) in 4.1.2-VI and 4.1.2-VII.

Further, you must not give any information about proposals to any Postal Service employee who does not absolutely need to know that information to perform his or her official duties.

Should you receive a request for information from any member of the public or from any Government organization outside the Postal Service about a proposed purchase, do the following:

1. Refer all oral questions, and (if possible) hand-carry all written requests, to the procurement office.

Contact: _____ at _____.

2. If the requestor persists, say something like, "If I communicate any information on this subject, it would be a serious violation of Postal Service policy. I know you would not want to put me in that position. Please contact the contracting officer."

It is necessary for the contracting officer to be the focal point for all information requests about proposed purchases, to ensure that all information the Postal Service disseminates is the same and that any pertinent information is officially disseminated promptly to all potential offerors. We must work together within the Postal Service so that the business community and other members of the public will be convinced of the fairness of our procurement system.

Thank you for your cooperation.

Sample for PH 4.1.3-I, Proposal Handling
Memorandum Designating an Employee to Open Proposals

MEMORANDUM DESIGNATING AN EMPLOYEE TO OPEN PROPOSALS

To:

From: Contracting Officer

This memorandum authorizes you to open and record proposals submitted in response to Postal Service solicitations, on the condition that you strictly adhere to the guidelines outlined in this memorandum.

1. Do not allow persons from outside the procurement office to be present when you open proposals, unless those persons are authorized by the contracting officer. Under no circumstances will persons outside of the Postal Service be in attendance when proposals are opened.
2. Do not discuss or give written information to anyone outside the procurement office.
3. Prepare a record of the proposals using the Document Generation System (DGS).
4. Do not leave unopened proposals unattended on a desktop. Secure them in a safe until they are completely recorded. When they are recorded, hand them to the contract specialist or contracting officer. Do not leave proposals in an "IN" basket. If the contracting officer or specialist is unavailable, leave him or her a note that the proposals are recorded and are ready for his or her scrutiny, and secure the proposals in a locked safe or file.

This is a responsibility of trust and is vital to the success of our Postal Service procurement system. I know you will perform this duty with care and diligence.

Format 1 for PH 4.1.4-III, Technical Evaluation Documentation
Deficiency Report

DEFICIENCY REPORT

Offeror

Area

Proposal Volume
 (or other main section identifier,
 if applicable)

Item

Proposal Chapter
 (or other subsection identifier,
 if applicable)

Criterion

Page

Evaluator

Deficiency

Instructions: (1) Identify the standard, (2) explain how the proposal fails to meet the standard, (3) describe what the offeror must do to correct the deficiency, and (4) explain the effect on performance if the deficiency is not corrected.

Format 2 for PH 4.1.4-III, Technical Evaluation Documentation
Strong Point/Deficiency Summary

STRONG POINT / DEFICIENCY SUMMARY

Offeror

Evaluator

Proposal Volume

Strong Points

Deficiencies

Instructions: (1) List strong points of the proposal that exceed the standards, (2) identify page numbers on which each strong point appears, (3) identify the standard associated with each strong point, (4) explain how each strong point exceeds the standard and why it is useful to the USPS, and (5) list each deficiency described on a Deficiency Report form.

Format 3 for PH 4.1.4-III, Technical Evaluation Documentation
Risk Assessment

RISK ASSESSMENT

Offeror

Evaluator

Proposal Volume

Risk Assessment:

___ High ___ Moderate ___ Low ___ None

Format 4 for PH 4.1.4-III, Technical Evaluation Documentation
Evaluation Score Summary

EVALUATION SCORE SUMMARY

Offeror

Proposal: ☐ Initial
 ☐ BAFO

Evaluator

Assigned Score:

Technical

Management:

Rationale:

Instructions: (1) Indicate score assigned in accordance with scoring guidance, (2) briefly provide your rationale for the assigned score.

Exhibit for PH 4.1.5-VIII, Planning for Negotiations
Negotiation Plan—Outline

NEGOTIATION PLAN—OUTLINE

- A. Identity of the Offeror(s) (include background on offeror if pertinent to the negotiation)
- B. Evaluation Results
- C. Technical Negotiation Issues
 - Description of issues (differences between USPS and offeror)
 - Specific USPS objectives with supporting rationale (target and minimum)
 - Assessment of probability of achieving objectives
- D. Price Negotiation Issues
 - Description of issues
 - Specific USPS objectives with supporting rationale (target and minimum)
 - Assessment of probability of achieving objectives
- E. Negotiation Approach (item by item or bottom line) and Rationale
- F. Negotiation Team (include specific responsibilities)
- G. Negotiation Schedule
- H. Negotiation Session Agenda (attachment)

Guidelines for PH 4.1.5-X, Conducting Debriefings
Debriefing Ground Rules

DEBRIEFING GROUND RULES

WHAT TO DO . . .

- Discuss the Postal Service's evaluation of the significant weak or deficient factors in the proposal.
- Be courteous and respond to questions involving the offeror's proposal and its evaluation.
- Respond to questions *only* within the framework of the solicitation.
- Refer to sections of the solicitation where appropriate.

WHAT TO AVOID . . .

- Making point-by-point comparisons with other offeror's proposals.
- Disclosing the relative merits or the technical standing of other offerors.
- Disclosing information not available under the Freedom of Information Act, such as trade secrets, financial information, or privileged or confidential processes and techniques.
- Indicating any uncertainty about the evaluation results or process.
- Providing more information or commentary than is required to conduct the debriefing.

4.2 Simplified Purchasing

I. Purchase Documentation

Document your actions even when you are performing the most simplified purchase. The documentation may be minimal, but it must be present. The checklist for this procedure, "Documentation of Simplified Purchases," provides an example of the type of information you should include in your file.

II. Requisition Review

Review each requisition you receive to see that it contains all the information you need to initiate a purchase action.

If the requisition is incomplete, you may either—

1. Return it to the requisitioner for completion, or
2. Call the requisitioner to obtain the necessary information.

The checklist for this procedure, "Checklist for Requisition Review," will help you ensure that the requisition is sufficient.

4.2.1 General

I. Simplified Purchasing When a Higher Dollar Ceiling Is Authorized (4.2.1.b.1)

When the APMG authorizes the use of simplified purchasing procedures for purchases exceeding \$50,000, the objectives are to streamline the solicitation process and gain flexibility in structuring the contract terms and conditions. The contracting officer must still comply with all review, approval, and documentation requirements that pertain to buys at the dollar value in question. However, competition can ordinarily be limited to three quotations or proposals, as stipulated in PM 4.2.1.d, and the contract clauses can be limited to those mandatory at the dollar value in question or needed to protect the Postal Service's interest.

II. Simplified Purchasing Up to \$1 Million for Standard Commercial Products (4.2.1.b.2)

When the contracting officer decides to use simplified purchasing procedures for purchases of standard commercial products not exceeding \$1 million, the following steps must be taken:

1. Obtain necessary delegation of contracting authority if the amount of the purchase is above your limit. See PH 1.5.1.
2. Obtain Law Department review if required. See PH 1.5.2-II.
3. Place written documentation in the file, verifying that the product being purchased is in fact a standard commercial product. See PM 2.3.
4. Prepare a solicitation in accordance with PM 4.2.2.d and PH 4.2.2-I, using the Document Generation System (DGS), or initiate oral communications to solicit

offers. Include in a written solicitation any provisions and clauses that are applicable considering the dollar amount and nature of the buy. Review PM Appendices A and B, in conjunction with use of DGS, to determine which provisions and clauses to include.

5. Solicit competition in accordance with PM 4.2.1.d. Be aware that even at the higher dollar amounts, *simplified purchasing* procedure is still being used. Therefore, three quotations or proposals ordinarily will provide sufficient competition.

4.2.2	Solicitations
--------------	----------------------

I. Standing Price Quotations (4.2.2.c)

Prerequisites for the Use of Existing Catalogs or Price Lists

You may use an existing catalog or price list (not originally solicited by the Postal Service) as a standing price quotation when:

1. The publication of a catalog or price list is a standard practice of the supplier.
2. The catalog or price list includes usual discounts for best customer treatment based on volume or quantity purchasing.
3. The catalog or price list is verified as current by contracting officers quarterly.

Steps in Soliciting Standing Price Quotations

If you can identify in advance supplies or services that you will be purchasing in the future on a recurring basis, you may solicit standing price quotations as detailed below:

1. Identify and categorize the supplies or services for which you anticipate a recurring need.
2. Identify a reasonable number of vendors in the local trade area that provide items or services of the type required.
3. Send a written request for standing price quotations to those vendors identified in item 2 above, explaining the projected circumstances under which they will be used and providing a list of the supplies and services identified under item 1 above.
4. Upon receipt, review the standing price quotations to eliminate those that are clearly not fair and reasonable, and provide a copy of those remaining to ordering activities.

Using Standing Price Quotations

Contracting and ordering office personnel should do the following before making purchases based on standing price quotations:

1. Attempt to obtain a generic description in addition to any desired models or part numbers.
2. Check available standing price quotation lists for items meeting the generic description and compare prices.

3. Screen the supplies or services being purchased against those contained on known basic pricing agreements and requirements contracts.
4. If you identified existing agreements or contracts, complete the purchase by placing an order or call under the existing contractual document.
5. If you identified no existing agreements or contracts, issue a purchase order, following the format shown as Exhibit 3 for PH 4.2.2-I.

Requirements in Maintaining Standing Price Quotations

1. Adopt a method for review on a quarterly basis. You may place an expiration date contained within a legend stating "expires on _____ unless reviewed and found to be current." Subsequent reviews could then be annotated as reviewed and current, with the date and initials of the reviewer, on the face of each standing price quotation. Any local method may be used as long as it provides adequate control.
2. Allow contracting and ordering office personnel to update price changes by pen-and-ink annotations on standing price quotations, with changes noted and dated. If quarterly reviews reveal excessive pen-and-ink changes, you should request new standing price quotations from the supplier.

II. Simplified Purchasing Solicitation Preparation (4.2.2.d)

Oral Solicitations

When conducting an oral solicitation, follow the steps below:

1. Identify yourself by name and as a representative of the U.S. Postal Service.
2. Provide the vendor with a complete description of—
 - The supplies or services you will be purchasing,
 - The quantities needed,
 - The required delivery date, and
 - The complete delivery address.
3. Provide the vendor with any other information pertinent to the buy.
4. Obtain the following information from the vendor:
 - Full name, address, and telephone number of the firm;
 - Name of contact person;
 - Type of business;
 - Tax Identification Number (TIN);
 - Price quotes;
 - Discount terms;
 - Delivery date;
 - Free on board (f.o.b.) point; and
 - Any other information pertinent to the buy.

5. Record the information you obtain on a solicitation worksheet, such as the one shown in the checklist for PH 4.2.3-I.

Written Solicitations

The Document Generation System (DGS) will produce the documentation you will need for a written solicitation. The package includes:

1. Receiving Report/Accounting and Fiscal Data Sheet;
2. Solicitation: Simplified Purchasing;
3. Offer and Award: Simplified Purchasing;
4. Attachment A, Schedule of Items/Prices;
5. Attachment B, Terms and Conditions;
6. Destination Schedule.

Exhibits 1 through 5 for this procedure provide samples of some of the documents listed above. Note that in Exhibit 4, "Attachment B, Terms and Conditions," only the titles of the terms and conditions are listed. In the actual Attachment B, the terms and conditions are printed in full text.

DGS will automatically generate certain contract clauses based on the type of procurement and the nature of the buy. The last question the system will ask you when you are assembling a package is, "Do you want to add any other clauses?" *You may use any PM clause applicable to the purchase.* Refer to Appendix B of the PM for additional clauses that may apply.

III. Presolicitation Notifications

You must provide notice of solicitations for certain kinds of Postal Service requirements to Postal Service organizations outside the procurement office. See PH 4.1.2-II.

4.2.3 Receipt and Evaluation of Proposals and Quotations
--

I. Recording Proposals and Quotations

Prepare a record of quotations or proposals and place it in the purchase file. At a minimum, include the following information in the record:

1. Firms contacted
2. Person contacted
3. Contact date
4. Type of business
5. Prices
6. Delivery date
7. F.o.b. point

8. Discounts
9. Tax Identification Number (TIN)

The sample for this procedure, "Solicitation Worksheet," can be used as a guide.

II. What to Check in Evaluating Proposals and Quotations (4.2.3.b)

Make sure you address each of the following areas in your evaluation.

1. *Compliance with Specifications or Statement of Work*

Determine whether the vendor has taken exception to the description of the supplies or services. If so, determine whether to eliminate the quotation or whether to discuss it with the vendor.

2. *Compliance with Delivery or Performance Schedule*

Determine whether the vendor has been responsive to the delivery or performance requirement. If not, determine whether it is in the best interest of the Postal Service to eliminate the quotation or to discuss the delivery or performance requirements with the vendor.

3. *Basis for Transportation Charges*

Make sure that all vendors have quoted on the basis of free on board (f.o.b.) destination, if that is what was indicated in the solicitation. This does not mean that you should automatically eliminate a quote that was made on the basis of f.o.b. origin. If the price offered was low, you might want to discuss the matter with the supplier and seek agreement to change the quote to f.o.b. destination, or evaluate the total cost of the purchase if the Postal Service pays for transportation.

4. *Inspection and Acceptance*

The terms and conditions which apply to simplified purchasing contain the following statement regarding inspection and acceptance: "Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the contractor unless loss results from negligence of the Postal Service."

If the Postal Service purchases items on an f.o.b. origin basis, it is the Postal Service's responsibility to transport or arrange and pay for the transportation of supplies from the point of origin. Title passes to the Postal Service at the point of origin, as does the risk of any loss or damage during transport. It is important to understand the additional liability that the Postal Service takes on when purchasing supplies f.o.b. origin.

5. *Price*

Determine if the price is reasonable before you issue an order. Never simply assume that a price is reasonable; base your decision on some degree of price analysis in accordance with PM 5.3.3.b and PH 5.3.3-X. If you receive equal low quotes, you must select between them on the basis of performance record, experience, or other factors in the Postal Service's interest. Determine award by drawing lots only if there is no other basis for selection.

- a. *Adequate price competition.* When you obtain quotes from at least two sources, both of whom are able to meet your requirements and are contending for the order based on price, you normally have "adequate price competition." If you issue the order to the vendor with the low price, you can assume that the price is reasonable. But remember, as a matter of policy, you should ordinarily obtain quotes from at least three sources.
- b. *Price history.* If you have purchased the same supplies or services recently and you know that the prior contract price was reasonable, you can compare that price to the current quote and come to some conclusion about its reasonableness. This approach only works, however, if you are fairly certain that the previous price was in fact reasonable. Such would be the case if the previous purchase order amount was determined by obtaining competitive quotes.
- c. *Catalog or market price.* If the prices are based on an established catalog or market price, you might have a basis for concluding that the price is reasonable. However, you need to assure yourself that the claimed catalog or market price is the price at which substantial quantities of the item or services are sold to the general public (more than 50 percent of the sales should be to other than Government purchasers). An important point to remember when you use price lists or market prices is that the Postal Service, as part of the Federal Government, frequently gets a substantial reduction off the list price. Also, keep in mind that commercial discounts are sometimes better than Government discounts, so you would want to check both. Finally, remember you can negotiate using catalog or market prices as a base.
- d. *Independent Postal Service cost estimate.* Do not assume that, because the quoted price is the same as or less than the in-house estimate, the quoted price is reasonable. In some cases, the individual who initiates the requisition obtains an informal quote from the supplier before giving you the requisition.

On the other hand, if the requisitioner arrived at the estimate independently, based on a good understanding of what the item or service should cost, you can compare the quotes with the estimate and draw some conclusions about reasonableness.
- e. *Buy American Act.* If you receive a quote for a foreign item you must compare it to the lowest domestic quote by adding 6 percent to the foreign quote in accordance with PM 10.3.2.c.
- f. *Value and visual analysis.* These are simple and direct approaches to evaluation. Draw on your own experience to determine the value of what you are buying. Then ask, "Is the price appropriate for what I'm getting?" For example, if you are purchasing supplies, and the price for a simple flashlight and batteries is quoted at \$120, you would realize right away that the price is out of line. There might be a good explanation for the high price, but you need to ask for it. Use the same approach to value as you do in your own buying.
- g. *Cost analysis.* If none of the above approaches assures you that the price is fair and reasonable, what should you do? Keep in mind that in all cases you need some basis for deciding that the purchase order price is reasonable. You might ask the supplier for an explanation of a quoted price and then evaluate the explanation. This approach is similar to *cost analysis*, which is used for large negotiated purchases and is often more time-consuming than other approaches.

However, on a relatively large transaction, when there is no other basis for evaluating reasonableness, you may have no choice.

6. *Offeror's Responsibility*

You must determine that the otherwise successful offeror is "responsible." This means, generally speaking, that you must be sure that the offeror has the capability to do the job (called *capacity and credit*) and the willingness to do the job correctly (called *tenacity and perseverance*). Determine responsibility in accordance with PM 3.3.1.e and PH 3.3.1. Limit your research so that it is not excessive to the dollar value of the procurement.

4.2.4 Ordering Methods

Local Purchase Order Payment Methods and Procedures

1. *Filling in the Local Purchase Order Form, PS Form 7444.*

All copies of the form must be legible. To ensure legibility, all entries other than signatures must be typed or PRINTED with a ball point pen. SELLER'S NAME AND ADDRESS MUST BE PRINTED.

Follow block-by-block the instructions below when filling in the form:

- a. *Date of Order.* Enter the issuance date of the written order.
- b. *Number.* Number the orders chronologically starting with "1" at the beginning of each fiscal year. Precede the order numbers with the last two digits of the applicable fiscal year—for example, 88-1 for order number 1 in fiscal year 1988.
- c. *Delivery By.* If items are being picked up and services have been arranged by the Postal Service, write "Postal Service Pick-up" in this block. Otherwise, specify date of delivery.
- d. *Vendor/Seller.* Enter the business name and address of the supplier.
- e. *Furnish Below Listed Supplies/Services To.* Enter the name and the full address of the receiving activity. If this is an imprest fund purchase and the items ordered are to be delivered personally by the local supplier, enter the name and full address of the imprest fund cashier.
- f. *Supplies or Services.* Provide an item number for each separately identifiable supply item, with corresponding descriptions, unit prices, and total dollar amounts for each item. List items ordered individually. General descriptions such as "hardware" are not acceptable. Do not enter pricing until items are delivered or picked up, unless you discussed and agreed upon a price with the supplier on this particular purchase.
- g. *Billing Address.* Enter the full mailing address of the Postal Service finance office or imprest fund cashier who will be making payment.
- h. *Discount Terms.* Ask the supplier if it will consider a small percentage reduction in overall price if its invoice is paid promptly. If so, write in the percentage reduction and the maximum days in which the supplier will accept a reduction

from date of delivery of all of the items to mailing date of payment. Write "Net" if no discount terms.

- i. *Date Invoice Received.* If you paid in cash, write "N/A—Cash." Otherwise, leave blank.
 - j. *Ordered By.* You must be authorized to sign this block. Print name and title (or affix stamp) under or next to your signature.
 - k. *Justification.* Enter project reference or other identifying description.
 - l. *AIC.* Enter the Account Identifier Code.
 - m. *FIN NO.* Enter the Budgetary Finance Number.
 - n. *Account.* Enter the five-digit account number.
2. *Distributing Copies*

Copy No. 1 To seller. For use as the invoice or as an attachment to the seller's commercial invoice.

Copy No. 2 To seller for a record of the order.

Copy No. 3

- (1) On over-the-counter transactions where delivery has been made, complete receiving report section and forward this copy to the proper administrative office.
- (2) On other than completed over-the-counter transactions, forward this copy to location specified for delivery. (Upon delivery, receiving report section is to be completed and this copy forwarded to the proper administrative office.)

Copy No. 4 Retain in the book, unless otherwise instructed.

3. *Procedure When Paying Cash at Time of Purchase*

- a. Enter the amount of cash paid and obtain seller's signature in the space provided in the Seller section of copy no. 1. If seller prefers to provide a commercial cash receipt, attach it to copy no. 1 and check the "paid by cash" block at the bottom of the form.
- b. When payment is by cash, distribute copies as described in 2 above, except that copy no. 1 is retained by a Postal representative.

4.2.5 Basic Pricing Agreements

I. When to Use a Basic Pricing Agreement Rather Than an Indefinite-Delivery Contract (4.2.5.b)

A question that commonly arises on the use of basic pricing agreements (BPAs) is how to determine whether the proper tool for purchasing is, in fact, a BPA or if an indefinite-delivery contract would be more appropriate. PM 5.1.5 addresses indefinite-delivery contracts; refer to it for complete coverage.

As an overview, the chart for this procedure, "Comparison: Indefinite Delivery Contract and Basic Pricing Agreements," highlights some similarities and some differences. You may find it useful in making a determination on the appropriate use of a BPA.

II. Standard Basic Pricing Agreement (BPA) Language (4.2.5.f)

Assemble a BPA using the Document Generation System (DGS).

Include the following statements in a BPA regardless of the types of supplies or services for which you are establishing the agreement:

1. This document establishes a Basic Pricing Agreement (BPA) between the United States Postal Service [*name the specific office*] and _____ [*vendor*]. This agreement is in effect from _____ through _____ (not to exceed two years) or until cancelled by either the United States Postal Service or the vendor.
2. Vendor must furnish supplies or services of the nature described herein if and when requested by a USPS contracting officer or a designated representative. No conditions will apply other than those specified in this agreement or as may be mutually agreed to for a specific order.
3. The Postal Service is obligated only to the extent of authorized calls actually made against the BPA. Each order that the Postal Service places and the vendor accepts becomes an individual contract.
4. This agreement calls for the following items or classes of supplies or services to be provided by the vendor: [*List items or give a general description of supplies or services*].
5. Prices to the Postal Service must be as low as or lower than those charged to the vendor's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payments.
6. No individual order shall exceed \$5,000 [*or whatever lower limit the contracting officer establishes*].
7. The following individuals are authorized to make oral or written orders under this agreement up to the dollar amounts shown below.

NAME	ORGANIZATIONAL COMPONENT	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. All shipments under the agreement must be accompanied by delivery ticket sales slips itemizing the following information:
 - a. Name of vendor;
 - b. BPA number;
 - c. Date of order

- d. Itemized list of supplies or services furnished;
 - e. Quantity, unit price, and extension of each item, less applicable discount;
 - f. Date of delivery or shipment;
 - g. Name of individual placing the order; and
 - h. Signature of Postal employee receiving the supplies.
9. Choose the appropriate statement from the statements below and include it in the BPA when the procurement code is R.

Billing Option A

A summary invoice must be submitted in duplicate to the ordering office monthly or upon expiration of the BPA, whichever occurs first. The invoice must include all deliveries made during a billing period and must identify the delivery tickets covered therein, stating their total dollar value. The invoice is supported by receipted copies of the delivery tickets.

Billing Option B

An itemized invoice must be submitted in duplicate to the ordering office monthly or upon expiration of the BPA, whichever occurs first. The invoice must include all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

Billing Option C

Billing procedures provide for an individual invoice for each delivery; however, they will be paid monthly. These invoices are accumulated provided that: (1) a consolidated payment will be made for each specified period; and (2) the period of any discounts will begin on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(For other possible procurement codes, such as "N", "M", "T", or "D", the above options will not apply. Specific billing instructions must be included.)

10. For purchases made during a particular billing period, normally monthly, the Postal Service will process a consolidated payment within 30 days after the date it receives an invoice, or the ending date of the current billing period, whichever is later. Intentional falsification of invoices presented for payment violates 18 U.S.C. 1001 and may result in prosecution.
11. The vendor agrees to deliver the supplies by the mode of transportation indicated [insert]. This mode of transportation may be changed only with the approval of the contracting officer.
12. The following clauses are a part of the agreement:
- [Additional clauses which apply to a given BPA will be generated by DGS based on your answers to the questions the system asks.]

III. Issuing and Documenting Orders Against BPAs (4.2.5.g)

1. When placing an oral order against a BPA, provide the vendor with the following information:

- a. Your name,
- b. The Postal installation which you represent,
- c. BPA number,
- d. Order number,
- e. Description of the supplies or services you are ordering,
- f. Delivery/performance date, and
- g. Other information pertinent to this particular order.

[Written orders against a BPA are prepared in letter format.]

2. Keep a record of all orders that you place against a BPA, entering orders in the record at the time you place them.

A suggested format is shown as the sample for this procedure, "BPA Order Register."

IV. BPA Review (4.2.5.h)

The checklist for this procedure, "Review of BPA Files," lists the considerations that should be addressed in the contracting officer's semiannual review of BPA ordering and documentation.

4.2.6 Unpriced Purchase Orders

Establishing Price Ceilings (4.2.6.b)

When it is necessary to issue an unpriced purchase order, follow these guidelines in establishing a realistic price ceiling:

1. *For equipment repair and other services:* Prepare an in-house estimate of how many hours it will take the contractor to do the work. Also, establish hourly labor rates that are consistent with the rates being paid for the type of work in your geographic area. Even if the dollar amount of the work is estimated to be below \$2,500 and therefore not subject to the Service Contract Act, you can check the latest published Department of Labor wage determinations as a definitive basis for current wage rates.
2. *For supplies:* Review catalogs (even if they are not the most recent editions) to determine a realistic, fair, and reasonable price for the supplies that you are buying. Look at prices you have paid in the past for the same or similar items and rely on your general familiarity with the marketplace as additional bases for your determination.
3. *For any requirement:* Be conservative when you establish the price ceiling. The Postal Service maintains more control by using a figure that is slightly low than it does by using a figure that is unnecessarily high.

Checklist for PH 4.2-I, Purchase Documentation
Documentation of Simplified Purchases

DOCUMENTATION OF SIMPLIFIED PURCHASES

<u>Item</u>	<u>How to Document</u>
1. What Was Bought and Why	The "what" of the purchase should be obvious from the description of supplies or services shown on the purchase order itself. The file records should also show why something was bought and who authorized it. A properly completed requisition is the correct documentation.
2. Competition	If you obtain competitive quotes, make sure the file shows that. If you obtained written quotes, keep them in the file. Keep a record of oral quotations as well (see PH 4.2.3, Recording Proposals and Quotations.) State your reasons if you do not issue an order to the vendor with the lowest quotation. If you are unable to obtain competition, state the reasons in a written justification in accordance with PM 4.2.1.d.3.
3. Pricing	You need to justify in writing the price paid on all purchases over \$2,000. You do this by stating the basis for your conclusion that the price paid is fair and reasonable. Refer to PM 5.3.3.b for guidance on performing a price analysis to determine that a price is fair and reasonable. You may also review PH 4.2.3-II, What to Check in Evaluating Simplified Purchase Proposals and Quotations. Ordinarily, a few handwritten sentences on the requisition or a separate piece of paper will be sufficient documentation in this area. Remember, while price is an important evaluation factor, even in the field of simplified purchasing you are looking for the <i>best value</i> to the Postal Service. That means that you are looking for (1) a quality product or service; (2) delivered or performed on time; (3) at a fair price; (4) by a responsible contractor.
4. Q&A Sequence	When you use the Automated Procurement Documentation System (DGS) to generate a document, questions appear on the screen which you answer to determine the content of the document. As you respond to the question sequence, the associated answers are stored in the data base. This portion of the Working Document Area is the Question and Answer Sequence (Q&A). Keep a copy of the Q&A in your file.

Checklist for PH 4.2-II, Requisition Review
Checklist for Requisition Review

CHECKLIST FOR REQUISITION REVIEW

To be considered complete, a requisition should contain all of the following elements.

- _____ 1. Request date
- _____ 2. Realistic delivery date
- _____ 3. Complete delivery address
- _____ 4. Name and telephone number of person to call for information
- _____ 5. Budget Finance number
- _____ 6. Clear and accurate specifications (catalog or photo if available)
- _____ 7. In-house cost estimate
- _____ 8. Justification
- _____ 9. Suggested sources—company name, address, and telephone number
- _____ 10. Requesting and approval signatures
- _____ 11. Amount of funds available
- _____ 12. Accountable Finance number and Property Control number, where applicable.

Exhibit 1 for PH 4.2.2-II, Simplified Purchasing Solicitation Preparation
Receiving Report/Accounting and Fiscal Data Sheet

U. S. POSTAL SERVICE Receiving Report/Accounting and Fiscal Data Sheet					
1. Order Number: _____					Page Nos
2. Order Date: _____		3. Request No.: _____			
4. a. Issued By: _____		b. ACO Code: _____			
_____		c. For Information Call: _____			
5. Destination Delivery Requirements:					
a. Delivery Address: _____		e. Contact Name: _____			
_____		f. Telephone Number: _____			
_____		g. Inside Delivery Instructions: _____			
b. Deliver By Date: _____		h. GBL Number(s) or Permit Labels' _____			
c. Delivery Hours: _____		Furnished (Qty) _____			
d. FOB: Origin _____					
(City, State and Zip)					
Destination					
Items & Prices (or General Description of Requirement)					
Item	Supplies/Services	Qty	Unit	Unit	Extended
Number				Price	Price
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
6. Contractor					
a. Name: _____		d. Contact Name: _____			
b. Address: _____		e. Telephone No: _____			
_____		f. TIN: _____			
_____		(Tax Identification No.)			
c. Remittance Name and/or Address: _____		g. Parent TIN: _____			
(If different from above)					
7. Accounting, Fiscal and Receiving Data					
<u>Expense Items:</u>					
Sequence # _____		Budgetary Finance # _____		FAC _____	F/ACT _____
Account # _____		Sub-Account # _____		Sequence # _____	Amount \$ _____
	Quantity	Quantity	Date		
Item	Ordered	Received	Received	Rejected/Reasons	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
<u>Capital Equipment</u>					
Sequence # _____		Budgetary Finance # _____		FAC _____	PCN _____
Property Accountable Finance # _____		Trade-In Amt. _____		Sequence # _____	Amount _____
	Quantity	Quantity	Date		
Item	Ordered	Received	Received	Rejected/Reasons	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
8. ☐ Partial Shipment ☐ Final Shipment					
Signature of Authorized Person Receiving/Inspection Delivery:					
Signature _____			Date _____		
Typed or Printed Name _____			Title _____		
Enter the quantity received, accepted and the date for each item. Indicate the reasons for rejection, if any. Return the original to the Postal Data Center and send a copy to the Issuing Office.					

Exhibit 2 for PH 4.2.2-II, Simplified Purchasing Solicitation Preparation
Solicitation: Simplified Purchasing

U. S. POSTAL SERVICE	
Solicitation: Simplified Purchases	
1. Solicitation Number: _____	Page Nos. _____
2. Solicitation Information:	
a. Issue Date: _____ b. Return Date: _____ c. Return Time: _____ d. Contact: _____ e. Telephone: _____ f. Submit Offer in Original and _____ Signed Copies. g. If Offer is Hand Carried, Depository is Located In: _____	h. Return to Address: (If different than "Issued By" Address shown in Block 4) _____ _____ _____ _____
3. Offeror Name and Address _____	4. Issued By _____ _____ _____ _____
5. Sealed offers (in original and number of copies specified) for furnishing the supplies or services described in this solicitation will be received at the place (and, if hand-carried, in the depository) until the date and time (local time of the place) shown in Block 2. All offers are subject to the provisions, representations, certifications, specifications and contract clauses which follow or which are incorporated by reference, whether or not all of such attached pages are returned with the offer.	
6. Acknowledgement of Amendments - The offeror acknowledges receipt of solicitation amendments numbered and dated as follows.	
Amendment No. _____	Date _____
Amendment No. _____	Date _____
a. Latest Amendment No.: _____	b. Latest Amendment Date: _____
7. In compliance with this solicitation the undersigned offers and agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the solicitation return date, to furnish any or all items or services upon which prices are offered at the same price set opposite each item, delivered at the designated point(s), within the time(s) specified in the solicitation.	
8. Signature of Person Authorized to Sign Offer (Offeror):	
_____ (Signature)	_____ (Date)
_____ (Typed Name)	_____ (Typed Title)
Note: - Offers must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U. S. C. 1001.	

Exhibit 3 for PH 4.2.2-II, Simplified Purchasing Solicitation Preparation
Offer and Award: Simplified Purchasing

U. S. POSTAL SERVICE Offer and Award: Simplified Purchases					
					Page Nos.
1. Order No. _____					
2. Contract No.: _____		3. SOC/EC _____		4. Item Code _____	
5. Request No. _____		6. Last Delivery Date _____			
7. Solicitation Number _____					
8. a. Issued By: _____		b. ACO Code: _____			
_____		c. For Information Call: _____			
_____		(No Collect Calls)			
9. Offeror/Contractor					
a. Name: _____		d. Contact Name: _____			
b. Address: _____		e. Telephone No: _____			
_____		f. TIN: _____			
_____		(Tax Identification No.)			
c. Remittance Name and/or Address: _____		g. Parent TIN: _____			
(If different from above)					
10. Delivery Requirements:					
a. Delivery Address: _____		e. Contact Name: _____			
_____		f. Telephone Number: _____			
_____		g. Inside Delivery Instructions: _____			
b. Deliver By Date: _____		_____			
c. Delivery Hours: _____		h. GBL Number(s) or Permit Labels			
d. FOB: Origin _____		Furnished (Qty) _____			
(City, State and Zip)					
Destination					
11. Items & Prices (or General Description of Requirement)					
Item	Unit	Unit	Extended		
Number	Supplies/Services	Qty	Price	Price	
_____	_____	_____	_____	_____	_____
12. Discount for Prompt Payment					
% 20 Calendar Days _____ % 30 Calendar Days _____ % _____ Calendar Days					
13. a. Accepted As To Items Numbered _____					
b. Grand Total				\$ _____	
c. Net Total (total less discounts):				\$ _____	
14. Billing Instructions (Submit Invoices to):					
Postal Data Center		2700 Campus Drive			
Attn: Accounts Payable		San Mateo, CA 94497-9136			
15. Signatures					
Offeror/Contractor			U. S. Postal Service		
a. _____	b. _____	d. _____	e. _____		
Signature	Date	Signature	Order Date		
c. Name and Title of Person Authorized To Sign Offer (Type or Print): _____			f. Name of Contracting Officer (Type or Print) _____		
Distribution: Original - File Copy - Contractor Copy - PDC					

Exhibit 4 for PH 4.2.2-II, Simplified Purchasing Solicitation Preparation
Attachment B, Terms and Conditions

ATTACHMENT B, TERMS AND CONDITIONS

ATTACHMENT B	
TERMS AND CONDITIONS	
B. 1	INSPECTION AND ACCEPTANCE
B. 2	VARIATION IN QUANTITY
B. 3	DISCOUNTS (Provision A-10) (OCT 1987)
B. 4	CLAIMS AND DISPUTES (Clause B-9) (OCT 1987)
B. 5	PREFERENCE FOR DOMESTIC CONSTRUCTION MATERIALS.
	(Clause 10-17) (OCT 1987)
B. 6	SAFETY AND HEALTH STANDARDS (Clause B-28) (OCT 1987).
Clause 1-1	Privacy Act (October 1987) (1.7.4)
B. 7	FEDERAL, STATE, AND LOCAL TAXES (SHORT FORM) (Clause 7-7) .
	(OCT 1987)
B. 8	SERVICE CONTRACT ACT-SHORT FORM (Clause 10-13) (OCT 1987) .
B. 9	CONTINGENT FEES (Clause 1-6) (OCT 1987)
B. 10	OFFICIALS NOT TO BENEFIT (Clause 1-4) (OCT 1987).
B. 11	GRATUITIES (Clause 1-5) (OCT 1987).
B. 12	CONVICT LABOR (Clause 10-3) (OCT 1987).
B. 13	ASSIGNMENT OF CLAIMS.
B. 14	EQUAL OPPORTUNITY (Clause 10-9) (OCT 1987).
B. 15	WALSH-HEALEY PUBLIC CONTRACTS ACT (Clause 10-8) (OCT 1987).
B. 16	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE
	VIETNAM ERA (Clause 10-16) (OCT 1987)
	AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (Clause 10-15) (OCT 1987)
B. 17	TERMINATION FOR CONVENIENCE OF THE POSTAL SERVICE -SUPPLY .
B. 18	TERMINATION FOR CONVENIENCE OF THE POSTAL SERVICE - SERVICES
B. 19	TERMINATION FOR DEFAULT - SUPPLY.
B. 20	TERMINATION FOR DEFAULT-SERVICES.

**Exhibit 5 for PH 4.2.2-II, Simplified Purchasing Solicitation Preparation
Destination Schedule**
**U.S. POSTAL SERVICE
Destination Schedule**

1. Order Number _____ 2. Order Date _____ Page Nos _____
 3. Solicitation Number: _____ 4. Date of Solicitation: _____

5. Destination Delivery Requirements:

 a. Delivery Address: _____

e. Contact Name: _____

f. Telephone Number: _____

 g. Inside Delivery Instructions: _____

b. Deliver By Date: _____

c. Delivery Hours: _____

 d. FOB: Origin _____
 (City, State and Zip) _____
 Destination _____

 h. GBL Number(s) or Permit Labels
 Furnished (Qty) _____

Item Number	Supplies/Services	Qty	Deliver By Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Destination Delivery Requirements:

 a. Delivery Address: _____

e. Contact Name: _____

f. Telephone Number: _____

 g. Inside Delivery Instructions: _____

b. Deliver By Date: _____

c. Delivery Hours: _____

 d. FOB: Origin _____
 (City, State and Zip) _____
 Destination _____

 h. GBL Number(s) or Permit Labels
 Furnished (Qty) _____

Item Number	Supplies/Services	Qty	Deliver By Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Distribution: Contract File
 Contractor

Sample for PH 4.2.3-I, Recording Proposals and Quotations
Solicitation Worksheet

SOLICITATION WORKSHEET

DESCRIPTION OF REQUIREMENT

Requisition No. _____

Name of Firm							
Address							
Telephone Number							
Person Contacted							
Date of Contact							
Delivery Date Quoted/Proposed							
FOB Point							
Discount Terms							
Type of Business							
EI Number							
Other							
Item No.	Quantity	Unit Price	Total	Unit Price	Total	Unit Price	Total
1.							
2.							
3.							
4.							
5.							
Aggregate Total (Place a RED CHECK by successful offeror's price)							
Remarks:							
Date Requisition Received		Number of Quotes/ Proposals Solicited		Date Order Issued		Delivery Date(s)	
Order No.: _____							
Signature of Preparer _____							

Chart for PH 4.2.5-I, When to Use a Basic Pricing Agreement Rather than an Indefinite-Delivery Contract

Comparison: Indefinite-Delivery Contracts and Basic Pricing Agreements

COMPARISON: INDEFINITE-DELIVERY CONTRACTS AND BASIC PRICING AGREEMENTS		
	Indefinite Delivery Contracts	Basic Pricing Agreements
Conditions for Use	When it is known or anticipated that there will be requirements for supplies or services over a period of time, but quantities, items, or places of deliveries are not known at the time of contract award.	When a wide variety of items in a broad class may be purchased from local contractors, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.
Pricing	The contract establishes firm-fixed prices.	The agreement does not establish prices. Prices are established at the time of ordering.
Postal Service Obligation	An indefinite delivery contract obligates the Postal Service to either-- a. Place orders for a definite quantity of supplies or services; b. Place orders for an indefinite quantity of supplies or services within stated minimum and maximum limitations; or c. Fill all actual purchase requirements of designated activities for specific supplies and services to be delivered as ordered during the contract period.	A basic pricing agreement does not obligate the Postal Service to place any orders with the vendor. A BPA <u>is not a contract</u> . It is a charge account which the Postal Service holds with the vendor providing a convenient, cost-efficient method of ordering commonly used supplies and services.

Chart for PH 4.2.5-I, When to Use a Basic Pricing Agreement Rather than an Indefinite-Delivery Contract

Comparison: Indefinite-Delivery Contracts and Basic Pricing Agreements (continued)

	Indefinite Delivery Contracts	Basic Pricing Agreements
Ordering Method	Written orders should be placed by authorized activities. Oral orders must be confirmed promptly in writing.	Orders should be placed by authorized individuals by telephone call, over-the-counter request, or letter.
Ordering Limitations	The PM does not limit the dollar amount per order under an indefinite delivery contract. The contract may specify these limitations.	PM 4.2.5.e.4 limits the dollar amount per order under a basic pricing agreement to \$5,000 (unless fuel is being purchased, in which case, fuel tank capacity establishes the maximum).

Sample for PH 4.2.5-III, Issuing and Documenting Orders Against BPAs
BPA Order Register

[illegible]

Checklist for PH 4.2.5-IV, BPA Review
Review of BPA Files

REVIEW OF BPA FILES

A "No" answer to any of the following questions indicates that corrective action needs to be taken.

YES

NO

- | | | |
|-------|-------|--|
| _____ | _____ | Are orders being placed only by the authorized personnel named in the BPA? |
| _____ | _____ | Are orders being placed within the dollar limitations stated in the BPA? |
| _____ | _____ | Are orders being placed only for those supplies and services covered by the BPA? |
| _____ | _____ | Are orders being recorded in the BPA register? |
| _____ | _____ | Is competition being sought for orders in excess of \$2,000? If not, does the file show the reason for the lack of competition? |
| _____ | _____ | Does the amount being ordered each month justify the use of the BPA? (As a rule of thumb, unless you are spending \$150 or more a month under a BPA, it is probably better to make purchases with your local purchasing authority.) |
| _____ | _____ | Is the using office processing payment certifications properly and efficiently to ensure timely payment to vendors? (See MI AS-710-87-15, <i>Receiving Reports and Payment to Vendors for Supply and Service Contracts</i> , for complete information on processing paperwork for payment to BPA vendors.) |

4.3 Noncompetitive Purchasing

I. Requirement for Justification and Approval of a Noncompetitive Purchase

Requirements and procedures are set forth in Management Instruction (MI) AS-710-88-X, *Submitting Requests for Noncompetitive Purchasing Actions*. [Note: As of this issuance, the MI is in draft.]

II. Unsolicited Proposals

Unsolicited proposals will be accepted only for research and development work. See PH 8.4.4.a.2-VII. Unsolicited proposals do not include offers to sell or lease. Refer to the applicable real estate handbook for procedures for sales or lease proposals.

III. Unauthorized Contractual Commitments

Limitations

When someone who is not authorized to do so obligates *and* obtains goods or services for the Postal Service, such action may be sanctioned or "ratified" only when:

1. The Postal Service has obtained a benefit from the unauthorized commitment.
2. The resulting contract would otherwise have been proper if made by an authorized contracting officer.
3. The contracting officer determines the price for the goods or services to be fair and reasonable.
4. The contracting officer recommends payment and legal counsel concurs in the recommendation.
5. Ratifying the unauthorized purchase would not involve a claim subject to resolution under the Contract Disputes Act of 1978 (where the contractor has filed a claim under the Contract Disputes Act of 1978, the determination of whether to settle the claim or continue litigation should be based on the advice of assigned counsel).

Approval Process

A contract effected by a person without the proper authority must be approved by an official designated in PH 1.5.1.

The contracting officer recommending payment must submit the following documents to the appropriate approving official:

1. A memorandum, with attachments as necessary, that addresses the limitations stated in 1 through 5 above; and
2. An *Agreement for Payment* for the approving official's signature (see the format for this procedure), with paragraphs 1 through 3 completed. *The Agreement for Payment* format must be used to ratify the unauthorized purchase.

**Format for PH 4.3-III, Unauthorized Contractual Commitments
Agreement for Payment**

AGREEMENT FOR PAYMENT

1. Parties to the Agreement. This agreement is between:

_____, _____, _____
(Company name) (City) (State)

referred to hereafter in this agreement as "the contractor" and the United States Postal Service, hereafter referred to as "the Postal Service."

2. Basis for Agreement. On _____, 19 _____
[insert date unauthorized items or services were accepted]

the following items and/or services were accepted on behalf of the Postal Service by

(name of person who made the unauthorized commitment)

a Postal Service employee in _____:
(Department or Office)

[provide description of goods or services]

Because the Postal Service derived a benefit from the receipt of these items (or services), the Postal Service wishes to provide payment to the contractor through this agreement since (1) the contractor acknowledges that it has never received payment for these items and/or services, and (2) payment would otherwise not be possible since the purchase was not made by a Postal Service contracting officer.

3. The parties agree to the following:

- a. In complete payment for the items and/or services detailed in paragraph 2 above, the contractor is entitled to the sum of \$ _____.
- b. Upon approval of this agreement by Postal Service management, the contractor will be paid by the Postal Service the sum shown in paragraph 3a above.

Format for PH 4.3-III, Unauthorized Contractual Commitments
Agreement for Payment (continued)

- c. The contractor releases the Postal Service from any and all claims arising out of or in any way connected with the goods and/or services detailed in paragraph 2 above.

 (TYPE name of contractor official)

 (TYPE name of contracting officer)

 (Signature of contractor official)

 (Signature of contracting officer)

 Title

 Contracting officer

 (TYPE company name and location)

 (TYPE office and location)

4. Approval

I approve this agreement in its entirety.

 (TYPE name and title of approving
 official)

 (date signed)

- 5. Effective Date.** The effective date of this agreement is the date shown in 4 above.

4.4 Price Negotiation

4.4.1 Prenegotiation Objectives

Developing Prenegotiation Objectives

Factors to Consider

In addition to those stated in PM 4.4.1.b, the following factors are among those which may affect your price objective. They will be most pertinent in competitive procurements of commercial or quasi-commercial items. See also Checklist 2 for PH 4.4.2, "Improving Your Bargaining Power in a Noncompetitive Situation."

1. *Past and projected volume of sales; past and present dollar amount of purchases*

Larger volume or amount usually means lower prices. Potential loss of income puts pressure on the offeror, so lower volume or amount might mean higher prices. In either case, consider total volume, not just your order.

2. *Current market conditions*

A seller's market with high demand, or an inflationary market, will weaken your position. However, excess capacity can create a buyer's market and strengthen your position.

3. *Extent of competition*

When competition is strong, market forces tend to drive prices down. If competition slackens but demand stays strong, the advantage shifts to the offeror.

4. *Desire for Postal Service business*

An offeror eager for work can be expected to propose attractive prices; the offeror may be unable to cover fixed costs due to idle capacity. On the other hand, an offeror's interest may lag when it is already operating at capacity.

5. *Inventory*

An offeror with excess inventory is likely to propose attractive prices to reduce inventory carrying costs.

6. *Most-favored-customer determination*

If the terms and circumstances of a Postal Service purchase are equivalent to those a firm has arranged with its most favored customers, the prices also should be equivalent.

7. *Special concessions, terms, and conditions*

If the Postal Service demands extra rights or concessions from the offeror, prices will tend to be higher. Concessions by the Postal Service should be reflected in lower prices.

8. *Financing*

Banks may give special concessions to firms holding Postal Service or other Government contracts. These concessions may reduce the cost of doing business.

9. Type of product

A mass-produced commercial product should be priced lower than a product unique to the Postal Service. Studies indicate that the Postal Service, like other Government agencies, pays more when buying to its own specifications.

10. Price-adjustment provisions

When contract provisions reduce risk, an offeror should accept lower prices.

11. Urgency of purchase

Purchases requiring additional effort because of short delivery times normally command higher prices.

The Need for Flexibility

It is important that your objective be flexible and not a driving force within itself. Most questions of fact and uncertainties about proposed price or cost should be resolved before negotiation, through Postal Service fact-finding and analysis or discussions with the offeror. The differences that exist upon entering negotiation, therefore, should largely be differences of opinion—on value, on the likelihood of various circumstances materializing after contract award, and on the relative significance of factors that bear on the procurement. Consequently, you may be persuaded during negotiation of the merit of another point of view and, as a result, modify your objective.

In cost-type contractual arrangements you will in most cases be dealing with a range rather than a single final cost as your objective. Even with other contract types, a range of objectives is often more realistic than a single objective. For example, because of imperfect knowledge, you might make assumptions about physical differences in products, their effect on price, and so forth. If you find in negotiations that the facts don't support your assumptions, a different price will probably be indicated.

Special Cost-Analysis Advice

When you expect cost analysis to be the initial pricing method, you should consult with the Procurement Support Branch, Office of Procurement, at Headquarters before settling on your prenegotiation objectives. See 5.3.3-VII.

Documentation

As discussed in PM and PH 4.4.3, you will need to document the results of negotiation in a memorandum that, among other things, addresses your prenegotiation objectives. Document your objectives before negotiations, and then incorporate the documentation later in your memorandum of negotiation.

4.4.2	Negotiation
--------------	--------------------

Preparing for Negotiation Sessions

Be sure to take the following steps in preparation:

1. *Understand the requirement.* This is the most important aspect of your preparation. It is the basis for everything else.
2. *Establish the facts.* The facts to be established include the various intangibles that might affect the negotiation, such as personalities, motives, strengths, and weaknesses. Fact-finding may consist of research done by Postal Service personnel or with third-party sources, or it may take place during discussions (see PM 4.1.5.g and PH 4.1.5-III).
3. *Establish prenegotiation objectives.* (See PM and PH 4.4.1)
4. *Plan a negotiation strategy.* (Refer to the decision chart for this procedure, "Appropriate and Inappropriate Techniques in Negotiation of Competitive Proposals"; Checklist 1, "Help in Preparing for Negotiations"; and Checklist 2, "Improving Your Bargaining Power in a Noncompetitive Situation.")
5. *Plan an agenda.* Checklist 3, "Agenda for a Negotiation Session," addresses the elements to be included. If you foresee several sessions, plan multiple agendas.

4.4.3 Memorandum of Negotiation

Preparing a Memorandum of Negotiation

Contents

A memorandum of negotiation should answer the following questions in addressing the elements listed in PM 4.4.3:

1. **What was proposed and negotiated?** Things to identify include—
 - Contract or solicitation number;
 - Date and any identification number of a formal audit report (if applicable);
 - The extent of competition, with all offerors named by company, division, and address;
 - The competitive range if the procurement is competitive (how it was determined, which offerors were included, and which were not);
 - Services or items being procured, including all contract line items involved in the total;
 - Delivery schedule or period of performance;
 - Previous buys of the same or similar items; and
 - The procurement situation, including the contract type, the type of negotiation action (new procurement, definitization of letter contract, change order, and so forth), outside influences or time pressures (such as funding limitations, similar production work currently being performed under an existing contract), and Postal Service-furnished items and their estimated value.
2. **Who participated in the evaluations and who did the negotiating for both sides?** Identify technical evaluators, those involved in fact-finding, those involved in Postal Service prenegotiation reviews, and those in attendance at all negotiation sessions.

3. **When and where** were actions taken? Cite the dates and locations of major events. On larger, complex procurements, the easiest way to deal with this is to attach to the memorandum a chronology of events, which you have annotated daily from receipt of proposals through the close of negotiations.
4. **Why** were changes made to the original position of the Postal Service on price, terms, conditions, specifications, or delivery? Do such things as the following:
 - Tabulate in parallel form the proposals, any advisory recommendations, the Postal Service's prenegotiation objective, and the negotiated results including profit or fee;
 - Discuss how the Postal Service objective for each element was developed;
 - Indicate the extent to which cost or pricing data, if obtained, were relied on and used in negotiation;
 - Indicate the extent to which any cost or pricing data were recognized as inaccurate, incomplete, or noncurrent, and describe actions taken as a result as well as any effect on the price negotiated;
 - Discuss how the offeror developed its pricing, including the availability, adequacy, and use of subcontractor cost and pricing data;
 - Explain any significant difference between the Postal Service's prenegotiation objective and the negotiated result;
 - If competitive, comment on changes made in the offerors' proposals as a result of discussion and submission of best and final offers; and
 - Unless exempt (refer to PM 10.2.7.b), comment on whether equal opportunity provisions of the proposed contract were explained and whether an EEO clearance was needed.
5. **How** was the negotiated price justified as being fair and reasonable? In cost-type contracts, explain any situation that could cause final costs to differ significantly from the negotiated agreement.

Administrative Instructions

Use a format that corresponds with the dollar value and complexity of the procurement.

The negotiator signs and dates the memorandum. If the contracting officer was not the negotiator, the contracting officer must also sign and date the memorandum.

Indicate on the memorandum the offices to which it will be distributed. If it provided assistance, the Procurement Support Branch at Headquarters should be included in the distribution.

Decision Chart for PH 4.4.2, Preparing for Negotiation Sessions*Appropriate and Inappropriate Techniques in Negotiations of Competitive Proposals*

APPROPRIATE AND INAPPROPRIATE TECHNIQUES IN NEGOTIATIONS OF COMPETITIVE PROPOSALS	
DO NOT	DO
Do not bluff your way through a negotiation session.	Prepare--it's the best way to ensure success.
Do not disclose the elements of competing proposals or coach an offeror. Do not transfer information from one proposal to another.	Advise each offeror of the strengths and weaknesses of its own proposal. Negotiate the optimum terms, conditions, and price with each offeror.
Do not be vague or uncertain as to the objective of the negotiation, which is to reach agreement.	Identify, discuss, and negotiate a resolution of any contract elements that are unclear or unreasonable.
Do not use "auctioning" techniques--that is, playing one offeror against another. Examples: - Providing a price that must be met if the proposal is to receive further consideration - Telling one offeror that its price is not low in relation to another	Point out areas where you consider price/cost excessive and areas where you consider it fair and reasonable.
Do not negotiate any changes in the Postal Service requirements, terms, or conditions unless all offerors are given an equal opportunity to revise their proposals on the basis of these changes.	Disclose and resolve all technical differences and all unsubstantiated areas of price or cost.

Decision Chart for PH 4.4.2, Preparing for Negotiation Sessions

Appropriate and Inappropriate Techniques in Negotiations of Competitive Proposals (continued)

DO NOT	DO
Do not allow members of the USPS negotiating team to disagree at the negotiation table. A house divided will fall.	When team members disagree, call a recess. Get the Postal Service team together away from the company with which you are negotiating.
Do not unreasonably expose anyone to ridicule or insult, or attempt to make anyone look bad.	Stay in control of the discussion and allow only one person to talk at any one time.
Do not commit yourself on technical aspects you have not previously discussed with your technical advisors without getting the advice of those advisors.	Before consenting to technical changes that you have not previously discussed with your technical advisors, call a recess to consult with those advisors.
Do not allow a deadlock to occur unnecessarily.	If tempers flare or the parties appear to be fixed upon incompatible points of view, recess and regroup.

Checklist 1 for PH 4.4.2., Preparing for Negotiation Sessions
Help in Preparing for Negotiations

HELP IN PREPARING FOR NEGOTIATIONS

The techniques listed below have helped negotiators prepare for negotiation. Try them all at different times, taking dollar value and available time into consideration. Add other techniques as you gain experience in negotiation, so that you have your own list from which you can pick and choose.

Will Do	Will Not Do	
_____	_____	Make a list of every point to be negotiated.
_____	_____	Make a list of all points or topics to be avoided.
_____	_____	Determine and clearly categorize which of the negotiating points are "MUST" points and which are "GIVE" points.
_____	_____	Determine and put in writing your maximum, minimum, and target positions for each point, both "MUST" and "GIVE," to be negotiated. Whenever you can, put dollar values on your positions.
_____	_____	Determine your authority to settle issues or to settle the whole package under negotiation. You may have to touch base with your supervisor during recesses in the negotiation.
_____	_____	Realistically evaluate your bargaining position, both for individual points and for the overall outcome.
_____	_____	Plan when you propose to present the various points on your list, so as to achieve the best results on the important points.
_____	_____	Try to anticipate reactions and opposing views on each point, and prepare to rebut those views, if necessary.
_____	_____	Put yourself through a "devil's advocate" exercise, whereby you test each of your points and positions to see if it is fair and reasonable to both sides. Research the offeror's background, reputation, history, and performance record on previous agreements, contracts, and so forth.

Checklist 2 for PH 4.4.2, Preparing for Negotiation Sessions
Improving Your Bargaining Power in a Noncompetitive Situation

IMPROVING YOUR BARGAINING POWER IN A NONCOMPETITIVE SITUATION

Attempt to answer the questions in this checklist through fact-finding prior to negotiation, but continue exploring them during negotiation if you have not been successful in addressing all the possibilities. The more "Yes" blanks you can check, the better your bargaining position will be.

Yes	No	
_____	_____	1. Is it possible that the offeror is not aware that it is the only one that submitted an offer?
		(If the offeror may not be aware of its sole-source status, do not divulge the information! But don't lie; if asked, merely say that it is against Postal Service policy to discuss the content, number, or character of other proposals.)
		2. Are there any alternative means of meeting the Postal Service needs?
_____	_____	a. Could the Postal Service perform a similar service or provide a similar product in-house, at a level of expense and effort that is not prohibitive?
_____	_____	b. Can the requirement be modified, either in essential characteristics or in time of delivery or performance, to provide an alternative source or sources?
_____	_____	c. Is the requirement absolutely essential or can it be cancelled outright if a reasonable price cannot be reached?
		3. How will the award (or failure to award) affect the offeror?
_____	_____	a. Does the offeror need the business (is there any evidence of excess capacity)?
_____	_____	b. Is there any evidence that the contract award may provide the offeror with an overall future benefit?

Checklist 3 for PH 4.4.2, Preparing for Negotiation Sessions
Agenda for a Negotiation Session

AGENDA FOR A NEGOTIATION SESSION

This checklist will help you in structuring your negotiation session. As you outline your plan for addressing each structural element, place a check next to the element. To help control the time spent at the session, you may provide a written agenda, outlining each topic to be discussed, naming the Postal Service representative who will lead the discussion of the topic (if you are delegating any of the discussion items), and specifying the time frame for the topic. Keep in mind, however, that you must be flexible. While it is good to have time frames outlined, the unique circumstances of each negotiation will have an impact on these time frames.

- _____ *Introduction.* Introduce all members of both parties. Find out the extent of the authority of the offeror's representatives—that is, the degree to which they can bind the offeror to terms that differ from the offeror's initial proposal.

- _____ *Opening Statement.* Outline the areas of discussion and set up procedures for the meeting. Include a summary of the history of the purchase action, a reference to any evaluation fact-finding sessions and their results, and a synopsis of the purpose of the negotiations.

- _____ *Discussion of Technical Aspects.* Technical aspects should be discussed before pricing aspects, since the technical aspects usually affect pricing.

- _____ *Discussion of Price or Cost.* Broadly outline the Postal Service's position. Do not be overly specific but clearly indicate points of disagreement between the proposal and the Postal Service's analysis.

- _____ *Counteroffer.* Present the Postal Service's maximum position—the best deal the Postal Service believes it can obtain. It is then up to the offeror either to make a counteroffer or to defend the original offer. If your counteroffer is backed by good research and fact-finding, it is unlikely that the offeror can effectively defend its original proposal.

Checklist 3 for PH 4.4.2, Preparing for Negotiation Sessions
Agenda for a Negotiation Session (continued)

- _____ *Discussion of Various Price/Cost Elements.* Unless the offeror is prepared to make a counteroffer immediately, discussion of various price/cost elements will probably take place. Either party may change its position or make concessions. Try to keep the initiative, however, by refraining from making another offer as long as the Postal Service's offer is the last one on the table. An exception to this would be when the Postal Service's position is based on a conclusion that the offeror shows to be wrong. It is never in the Postal Service's interest to appear unreasonable.

- _____ *Agreement.* Normally, the process of discussion and concession will bring the parties to a point at which their objectives coincide. In noncompetitive situations, the parties generally bargain to final agreement at this point. In competitive situations, the contracting officer will now adjourn the meeting, stating that best and final offers will be requested within a short time.

- _____ *Conclusion.* In adjourning the meeting, summarize the points covered. At the close of discussions, it is important to make sure that the offeror thoroughly understands the Postal Service's requirements and the outcome of the discussions. (It is a good idea to document the points of agreement later in a letter to the offeror.)

4.5**Protests****I. Analyzing a Protest and Preparing a Contracting Officer's Decision or a Statement to Counsel**

In analyzing a protest, you should prepare an outline of the protester's allegations for use later in structuring your response. Sometimes protest letters ramble and state the grounds for protest in different ways at different points. You need to respond to every allegation, but you need do so only once.

Make sure you understand all the allegations and the basis of each. Depending on the complexity of the requirement, this may require extensive meetings with the requirements office.

Next, compare the factual record presented by the protester with your own record of the events.

Once you have determined the true factual circumstances, examine the rules and regulations affecting the protested issues to determine compliance.

If you find the Postal Service made a mistake, you should examine its effect on the competitive process and decide whether the mistake was serious enough to warrant corrective action. Even a serious mistake may not be sufficient to sustain a protest. You may find that correcting the mistake will not alter the outcome of the procurement (for example, if the protester would not be in line for the award even if the protest were sustained).

When you have completed your research, prepare a clear and concise statement of the facts of the procurement. Address each of the protester's allegations. If your decision or recommendation is to concur with an allegation, state the action that you will take (or that you recommend). In any decision that is contrary to the allegation, advise the protester how to appeal your decision. Before signing a contracting officer's decision that denies a protester's allegation, provide copies to your assigned counsel for review and concurrence.

II. Preparing a Protest File

The following items should be included in the protest file, as appropriate:

1. A copy of the protest.
2. The contracting officer's decision or statement (see PH 4.5-I above), including the documentary evidence on which it is based.
3. A copy of the solicitation.
4. A copy of the record of proposals received.
5. A copy of the proposal from the offeror to whom award has been or is proposed to be made.
6. A copy of the proposal from the protester, if any.
7. Indication of the current status of award. When award has been made, this will include whether performance has begun, shipment or delivery has been made, or a stop work order has been issued.

8. A copy of any mutual agreement to suspend work on a no-cost basis, when appropriate.
9. A copy of the notice of protest mailed or otherwise given to offerors and all other interested parties within two working days after receipt of the protest.
10. If applicable, a copy of the technical evaluation report on the protester, and a copy of each evaluator's rating for all proposals.
11. A copy of the memorandum of negotiation, when applicable.
12. Name and telephone number of the person in the procurement office who may be contacted for information relevant to the protest.
13. A copy of any document referred to in the contracting officer's decision or statement to counsel.

Chapter 5

Contract Pricing

5.1	Types of Contracts	
5.1.2	Selection of Contract Type	
	I. The Range of Contract Types	5.1-1
	Chart: Contract Types	5.1-8
	II. Selecting a Contract Type	5.1-1
5.1.7	Letter Contracts	
	Using Letter Contracts	5.1-4
	Sample: Letter Contract	5.1-11
5.1.8	Ordering Agreements	5.1-4
	Exhibit: Contracting Methods for Recurring Products or Services	5.1-13
5.1.9	Task Order Contracts	5.1-6
5.2	Cost Principles	
5.2.1	General	
	Determining Cost Allowability in Special Cases	5.2-1
5.2.4	Advance Agreements	
	Using Advance Agreements	5.2-1
5.3	Price Evaluation	
5.3.3	Proposal Analysis	
	I. Preparing to Use Price Analysis (5.3.3.b)	5.3-1
	Chart: Hierarchy of Price Analysis Techniques	5.3-17
	Checklist: Establishing Comparability of Prices	5.3-18
	II. Primary Comparison Techniques (5.3.3.b)	5.3-2
	III. Secondary Comparison Techniques (5.3.3.b)	5.3-3
	IV. Auxiliary Pricing Techniques (5.3.3.b)	5.3-4
	V. Comparability Adjustment Techniques (5.3.3.b)	5.3-4

VI. Price Analysis Report (5.3.3.b)	5.3-7
Sample: Price Analysis Report for Guard Service Rates	5.3-19
VII. Request for Price or Cost Analysis Assistance (5.3.3.b)	5.3-8
Format: Request for Pricing	5.3-21
VIII. Methods of Cost Estimating (5.3.3.d)	5.3-9
IX. Cost Analysis (5.3.3.d)	5.3-10
Checklist: Checklist for Analysis of Specific Cost Elements	5.3-22
X. Conducting Subcontract Price or Cost Analysis (5.3.3.f.)	5.3-13
XI. Analyzing Profit Factors (5.3.3.g)	5.3-14
XII. Handling Defective Cost and Pricing Data (5.3.3.h)	5.3-15

5.1 Types of Contracts

5.1.2 Selection of Contract Type

I. The Range of Contract Types

Contracting officers have available to them a range of contract types, varying in the degree and timing of responsibility assumed by the contractor for the costs of performance and in the profit incentive offered to meet or exceed performance objectives. At one end of the range is the firm-fixed-price contract under which the contractor agrees to assume full responsibility for performance costs. At the other end is the cost-plus-fixed-fee contract, where profit rather than price is fixed and the contractor's responsibility for cost is minimal. In between are various types of incentive contracts that shield the contractor from certain contingencies or offer a financial incentive to achieve a particular goal.

Except for a few "special use" categories, contract types may be divided into two broad groups, as shown in the chart, "Contract Types," following this section. Fixed-price contracts force the contractor to control all or most of the costs of work performed under the contract in order to earn a profit, and to bear the risk of a loss. Sometimes uncertainty makes a realistic estimate of the costs of performance impossible. When the contractor views uncertainty as a significant contingency factor, you may find a cost-reimbursement contract better suits your procurement objectives.

II. Selecting a Contract Type

As a contracting officer, your objective is to select the contract type that stimulates and rewards attainment of crucial objectives such as cost control, product quality, or delivery. Contractors respond best to arrangements they *perceive* will reward outstanding work with high profits and will penalize poor results with losses. They are interested in the probability—not just the possibility—of earning a profit. Your choice of contract type must recognize the contingencies that may affect profits on, or ability to perform, the proposed work. If you overlook these factors, your solicitation may yield inflated offers or less than adequate competition.

Steps

Consult the "Contract Types" chart for information on each contract type's applicability, essential elements, limitations, required approvals, and other features as you follow the steps in contract type selection.

1. *Establish realistic performance objectives and determine their priority.* Is cost control most important? Or a more reliable product? Or quick delivery?
2. *Assess the degrees of risk and uncertainty surrounding the major objective.* How readily will prospective offerors assume responsibility for performance costs, and how will their prices reflect their perceptions of risk or uncertainty?
3. *Consider the other selection factors discussed below.* What contract type will minimize Postal Service procurement costs and provide the contractor with the greatest incentive to perform efficiently and economically?

Risk and Uncertainty

No contractor can be certain when submitting an offer that it can complete the work called for in the solicitation on time, within budget, and to the Postal Service's satisfaction. Costs of labor or materials may rise, equipment breakdowns may delay delivery, or the product may not perform as required. Delays, rework, and cost increases cut into the contractor's profits, so it includes in the offer an allowance for two contingencies: risk and uncertainty.

The allowance for risk insures the contractor against expected losses from predictable occurrences, such as increases in prevailing wage rates. Because risk can be assessed statistically, the contractor's allowance may be quite realistic. You may use fixed-price contracts for procurements involving a significant degree of risk, but you may need to include incentive or economic price adjustment provisions. Sharing known risks with the contractor reduces the price of the contract to the Postal Service, and this tradeoff is often in its interest.

Uncertainty deals with the unknown and the unforeseen, particularly with regard to ability to perform. The contractor's allowance for uncertainty is simply an index of its discomfort with the possibility of loss from events it cannot predict, such as delays in manufacturing a product using unproven technology. Use a cost-reimbursement contract when the requirements introduce a significant degree of uncertainty in costs or ability to perform. Forcing contractors to assume responsibility for costs in this case is not in the interest of the Postal Service, as they are likely to submit offers containing ridiculously high contingency figures or to refuse to bid at all.

Other Selection Factors

Risk and uncertainty are major factors to evaluate in selecting the appropriate type of contract, but you should also consider:

1. *Reliability of the cost estimate.* In noncompetitive situations, you must base negotiation of contract pricing arrangements on the cost estimates of the offeror and the Postal Service. If you can gauge the accuracy of these estimates and predict the variance (a predicted variance of 5 percent means that you think actual costs will vary by no more than 5 percent from the estimate), you may be able to use the magnitude of the variance as a guide to contract type. The following table suggests contract types appropriate to several variances.

<u>Predicted Variance</u>	<u>Contract Type</u>
5% or less	Firm-Fixed-Price (FFP)
5 to 10%	Fixed-Price Incentive (FPI)
20% or more	Cost-Plus-Incentive-Fee (CPIF)
Unable to predict	Cost-Plus-Fixed-Fee-(CPFF)

2. *Extent of competition.* Normally, competition results in favorable and realistic pricing, and the contract type chosen should not limit it.
3. *Price analysis.* Price analysis, with or without competition, may provide a realistic pricing standard that allows you to use a fixed-price contract.
4. *Type and complexity of the requirement.* Procurements involving complex requirements, particularly those unique to the Postal Service, often introduce a degree of uncertainty that makes the use of a cost-reimbursement contract necessary to a successful procurement. Research and development work, where performance uncertainties and the likelihood of postaward changes make it difficult to estimate

performance costs in advance, is an obvious example. However, uncertainty will diminish as the Postal Service gains experience with a new technology or product, or completes development of a new item and begins production. As soon as experience allows you to realistically estimate prices, you should consider switching to a fixed-price contract for future work.

5. *Urgency of the requirement.* If urgency is a primary factor, the Postal Service may choose to assume a greater portion of risk or to offer incentives to ensure timely contract performance.
6. *Period of performance.* In times of economic uncertainty, contracts extending over a relatively long period may require the use of economic price adjustment features.
7. *Contractor's technical capability and financial resources.* When negotiating a contract, remember that each contractor assesses risk and uncertainty in relation to its own capabilities. Consider the magnitude of possible losses and the effect on the contractor's stability and operations.
8. *Adequacy of the contractor's accounting system.* The contractor's accounting system must permit timely development of all necessary cost data in the form required by the proposed contract type. This factor is critical when you are considering a contract requiring price revision while performance is in progress or a cost-reimbursement contract with a contractor whose previous work for the Postal Service has been under fixed-price contracts.
9. *Concurrent contracts.* When performance under the proposed contract involves concurrent operations under other contracts, the Postal Service must be able to determine whether costs have been properly allocated among all contracts. The pricing arrangements on existing contracts may affect your choice of contract type for the new work.
10. *Extent and nature of proposed subcontracting.* If the contractor proposes extensive subcontracting and the contract type originally contemplated under PM Provision 5-1, Type of Contract, does not reflect extensive subcontracting, negotiate the use of a contract type reflecting the actual risks to the prime contractor. Factors affecting risk include:
 - a. Supplies or services to be subcontracted.
 - b. Contemplated subcontractors.
 - c. Extent of technical supervision and administrative responsibility.
 - d. Degree of competition obtained.
 - e. Type of subcontracts to be used.
 - f. Financial investment and risk assumed.
 - g. Effect of subcontracting on quality, cost, and delivery under the prime contract.
 - h. Reliability of subcontract cost estimates.
11. *Previous experience with the contractor.* You may rely on previous experience with a contractor in determining the appropriate type of contract to use. In noncompetitive contracts, you should take this into consideration prior to your contemplated choice of contract type in PM Provision 5-1, Type of Contract. For example, the Postal Service might be reluctant to award a cost-reimbursement

contract to a contractor that has made only token efforts to control costs, but not to one that has an outstanding cost control record.

Combinations

Combining contract types may result in better risk allocation than using a single type. For instance, you might split a contract requiring both preventive and remedial maintenance into a fixed-price portion and a requirements portion. You might even include in the fixed-price portion a performance incentive to encourage comprehensive preventive maintenance.

5.1.7 Letter Contracts

Using Letter Contracts

A letter contract is a method of expediting contract performance when Postal Service needs require that a contractor begin work before all terms and conditions can be negotiated. It is effectively a cost-reimbursement contract until definitized, but may be superseded by any type of contract or combination of contract types described in PM 5.1. Letter contracts may be awarded with or without price competition, and may or may not provide for payments before definitization.

Guidance

Evaluate each letter contract to determine a reasonable funding level and schedule for definitization. Although you may award a letter contract for up to 50 percent of the estimated cost of the proposed work and may allow up to 180 days after award for definitization, it is in the interest of the Postal Service to negotiate a definitive contract as soon as practical. Under a letter contract, the contractor's normal cost and performance risks are reduced and incentives to perform economically may be absent.

Include in your letter contract the clauses specified in PM 5.1.7.d, as appropriate. The "Sample Letter Contract" following this section is an example of a letter contract that was not awarded on the basis of price competition and that does not provide for payments before definitization. If the contractor is to receive interim payments, the letter contract must include a specially tailored payment clause.

5.1.8 Ordering Agreements

Using Ordering Agreements

Ordering agreements are similar to basic pricing agreements, except that ordering agreements are used for large dollar orders and basic pricing agreements are used for simplified purchases. The similarity is that they both set up terms and conditions prior to the need for supplies and services so that when the need arises, delivery time can be shortened.

Although you may establish ordering agreements for supplies and equipment, their most valuable use within the Postal Service is for recurring technical services, such as drafting services. Other Government agencies use ordering agreements most often for repair parts, but the Postal Service has a somewhat sophisticated approach to tracking usage for repair

parts (turn rates) that makes the use of multiyear contracts with specified delivery dates for needed quantities the best contracting method for repair parts. You will generally find other contracting methods more suitable for other Postal Service supply and equipment buys. See the decision table for Recurring Products and Services following this section.

Since orders placed under an ordering agreement for services are often called task orders, ordering agreements are often confused with task order contracts (see PM and PH 5.1.9). A very important difference is that, by definition, a task order contract obligates the Postal Service to purchase a specific amount of the services as defined in the contract and the company is obligated to provide those services. In contrast, under an ordering agreement, the Postal Service is not obligated to make a purchase. Similarly, the company specified in an ordering agreement has the right to decline acceptance of an order.

Content of Ordering Agreements

Your description of the services to be provided under task orders should be quite detailed as to the technical services required. You must also include coverage for preparation of orders that includes a statement as to who is authorized to issue them, a response time for the contractor to submit a proposal, and procedures for the contracting officer and contracting officer's representative to follow in evaluating proposals for each order.

Ordering agreements can be characterized by any of the cost reimbursement or fixed-price contract types. You would use the clauses required for the most appropriate cost reimbursement or fixed-price contract type and choose from the series of optional clauses for ordering agreements contained in the Document Generation System (DGS).

Competition

PM 5.1.8 establishes the need for price competition, but you may also compete orders to be placed on the basis of other evaluation criteria, for example, area of expertise or quality of work. See PM 2.1.6.c and Procedure 2.1.6 VII for guidance on evaluation criteria.

In order to compete orders for price competition, you can usually obtain hourly rates for specific types of services; however, unit pricing of an end item may also be appropriate, and when possible would be preferred over hourly rates since it will generally reduce your analysis time prior to the placement of each order. For instance, in setting up an ordering agreement for graphic services, you would probably want unit prices for color slides, black-and-white slides, and overhead slides in addition to hourly rates for developing graphic designs. In setting up an ordering agreement for reproduction services, you could probably establish a price per page on a specified type and size of paper and pricing for several types of binding or binders.

If you are establishing several ordering agreements with different business for the same work, your descriptions of the supplies or services to be provided under the agreement should be identical, but recognize that one agreement may contain additional supplies or services not contemplated under another because of the services, specialties, or the company's willingness to enter into an agreement with the Postal Service for particular supplies or services.

If you have established several ordering agreements with different businesses for the same work, your request for proposal to all companies for any task order should contain the same descriptive language.

5.1.9 Task Order Contracts

Using Task Order Contracts

You should use task order contracts when the Postal Service needs to have at least one contractor obligated to perform a specific class of service but does not know the details of individual projects or requirements to be performed.

Within the Postal Service, this type of contract is best suited for professional services, including various studies involving work of a professional nature, product improvement programs, and research and development work.

Content of Task Order Contracts

Your description of the services to be provided under task orders should be quite detailed as to the studies or support services required. You must also include coverage for preparation of task orders that includes a statement as to who is authorized to issue them, a response time for the contractor to submit a proposal, and procedures for the contracting officer and contracting officer's representative to follow in evaluating task order proposals.

A task order contract can be a multiyear contract or can have options to extend its original period of performance.

Task order contracts can be characterized by any of the cost reimbursement, time and materials, or fixed-price contract types. You would use the clauses required for the most appropriate contract type and choose from the series of optional clauses for task order contracts contained in the Document Generation System (DGS).

Competition

Normally, your solicitation should contain detailed evaluation criteria for both technical and price proposals. See PM 2.1.6.c and Procedure 2.1.6 VII for guidance on evaluation criteria. You should establish a basis for price proposals that will allow you to evaluate all offerors on an equal and objective basis. For example, you normally would be able to specify that offerors provide hourly rates for specific categories of professional and support personnel, so that your pricing evaluation can show a projection based on a number of hours that the Postal Service estimates it will need in each personnel category during a basic contract period.

In most cases, you will award only one contract after competing the anticipated general requirement among qualified contractors. You would generally find it beneficial to award more than one if the anticipated general requirement might potentially exceed the capability of a single contractor.

Master Agreements

Postal Service contracting regulations once prescribed a contract type called a master agreement (a misnomer since its terms did obligate both parties) that was in reality a highly structured and controlled form of a task order contract. Its prescribed use was for research, development, and engineering projects. Several contracts were usually awarded for the same type of service, and both the contracts themselves and the orders placed under them were generally competed.

If you are writing a follow-on contract to a master agreement today, you will generally find it appropriate to issue a task order contract, choosing from the series of optional task order

contract clauses in the Document Generation System (DGS) and following the mandatory direction of PM 5.1.9.

Chart for PH 5.1.2, Selection of Contract Type

Contract Types

FIXED PRICE GREATEST COST RISK TO CONTRACTOR					
	Firm Fixed Price	Fixed Price With Economic Adjustment	Fixed Price Incentive	Fixed Price With Redetermination*	Fixed Price Level of Effort
APPLICABLE	Fair and reasonable price can be established at inception, e.g., - Reasonably definite design or performance specifications - Realistic estimates - Adequate competition - Valid cost or pricing data that provide reasonable price comparisons	Market or labor conditions unstable over extended period of performance.	Where cost uncertainties exist and there is the possibility of cost reduction and/or performance improvements by giving contractor (1) a degree of cost responsibility and (2) a positive profit incentive. Firm Target Type: firm target and final profit adjustment formula can be negotiated initially. Successive Target Type: initial target can be negotiated, but firm final targets cannot; sufficient information will be available early enough in performance to set final goals.	Stated Time or Times: quantity production--realistic price can be negotiated initially but not for later period(s) of performance. Retroactive After Completion: realistic fixed price cannot be negotiated initially; amount so small or time so short any other contract type impracticable. Most appropriate for R&D of \$100,000 or less.	Suitable for investigation or study in a specific research or development area. Product is usually a report showing results achieved through required level of effort. However, payment is based on effort expended rather than results achieved.
RELEVANT	Initial fixed price places 100% responsibility and risk on contractor.	PM Clause For Actual Cost Basis: Clause 5-3, Economic Price Adjustment-Labor and Material. A tailored clause is needed for adjustments based on cost indexes. Ceiling on upward adjustment; downward adjustment appropriate where elements escalated may fall below base levels provided in contract.	Firm Target: target cost; target profit; price ceiling; and profit adjustment formula. Successive Targets: initial target cost and target profit; price ceiling; firm target profit formula; and production point for application to get either a firm target and final profit formula, or a fixed price contract.	Stated Time or Times: fixed price initially; prospective redetermination, upward or downward; a specific time or times for redetermination; price ceiling if appropriate. Retroactive After Completion: ceiling price; agreement to negotiate price after performance.	Requires (1) contractor to provide specified level of effort, over stated period of times, on work that can be stated only in general terms and (2) the Postal Service to pay contractor a fixed dollar amount.
LIMITATIONS	Postal Service and contractor must agree on fixed price at inception.	Contingencies are industry-wide and beyond contractor control; contingencies must be specifically defined in the contract. The percentage figure used in paragraph C6 of Clause 5-3 must not exceed 10%.	Must determine that a firm fixed price contract is not suitable.	Must determine that a firm-fixed price contract is not suitable.	Use only when: (1) End result cannot be clearly defined; (2) Level of effort and hours are agreed to in advance; (3) No reasonable assurance exists that intended result cannot be achieved by less than the stipulated effort.
APPROVALS	None	None	The use of performance or delivery incentives would require prior approval of the General Manager, Procurement Policies and Programs Division, Procurement and Supply Department.	Requires prior approval of the General Manager, Procurement Policies and Programs Division, Procurement and Supply Department.	None required
REMARKS	Preferred over all types Minimum administration	Reduces fixed price risk for contractor.	May also use performance or delivery incentives, where feasible.	More administration required by contractor and Postal Service.	

NOTE: This is a comparison tool only. Refer to PM for detailed requirements.

Chart for PH 5.1.2, Selection of Contract Type
Contract Types (continued)

COST REIMBURSEMENT GREATEST COST RISK TO POSTAL SERVICE					
	Cost and Cost Sharing	Cost Plus Incentive Fee	Cost Plus Award Fee*	Cost Plus Fixed Fee	Time and Materials (Labor-Hour)
A P P L I C A B L E	Uncertainties in Performance -- Impossible to Estimate Costs Firmly				
	Cost: R&D with nonprofit organizations or educational institutions; facilities contracts. Cost Sharing: development or research projects jointly sponsored by Postal Service and contractor where contractor anticipates commercial benefit.	Development and test when incentive formula can provide positive incentive for effective management. Where feasible, use performance incentives together with cost and schedule incentives.	(1) Level of effort for performance of services where mission feasibility is established, but measurement of performance must be by subjective evaluation; (2) work which would have been placed under another type of contract if performance objectives could be expressed in advance by definite milestones or targets susceptible of measuring actual performance.	Level of Effort Form: research, preliminary exploration, or study when level of effort is initially unknown (or development and test when a CPIF is impractical). Completion Form: research or other development effort when the task or job can be clearly defined, a definite goal or target expressed, and a specific end product required.	Not possible initially to estimate extent or duration of work (L-H used where materials not involved), e.g., engineering or design services; repair, maintenance, or overhaul.
E S S E N T I A L	Cost: Postal pays allowable costs; no fee. Cost Sharing: Postal pays agreed predetermined portion of allowable costs; no fee.	Target cost; target fee; minimum and maximum fee; fee adjustment formula (formula applied at end of performance).	Negotiated estimate of cost stated as a base fee; maximum fee; the criteria against which performance is evaluated, resulting in an award fee.	Negotiated estimate of costs; fee fixed initially except for changes in the work or services required. Fee stated in dollars.	Direct labor hours specified at fixed hourly rates; direct materials at cost. Ceiling price shall be established in contract.
	PM Clauses • Clause 5-4, Allowable Cost and Payment • Either clause 5-5, Limitation of Costs, or Clause 5-6, Limitation of Funds Cost: Clause 5-7, Cost Contract - No Fees Cost Sharing: Clause 5-8, Cost Sharing Contract, No Fee	PM Clauses • Clause 5-4, Allowable Cost and Payment • Either clause 5-5, Limitation of Costs, or Clause 5-6, Limitation of Funds • Clause 5-9, Incentive Fee	PM Clauses • Clause 5-4, Allowable Cost and Payment • Either clause 5-5, Limitation of Costs, or Clause 5-6, Limitation of Funds • A tailored clause with Award Fee Provisions	PM Clause Clause 5-16, Payment (Time-and-Materials, and Labor-Hour Contracts)	
L I M I T A T I O N S	Adequate Contractor Accounting System Required				
		Fee Limitations Formula should provide incentive effectiveness over variation in costs throughout the full range of reasonable foreseeable variation from target cost.	Final fee determination by Postal not subject to disputes clause. CPAF is not for procurements of a major system categorized as either engineering development or operational system development which have undergone contract definition.		Determination that no other type of contract is suitable.
A P P R O V A L S	None		Requires prior approval of the General Manager, Procurement Policies and Programs Division, Procurement and Supply Department.		Constant Postal Service surveillance necessary.
	Requires maximum auditing and administrative surveillance				
H I S C.			Can use combinations of CPAF and CPIF as appropriate to reflect degree of subjectivity and objectivity of performance measurement method, but requires prior approval as indicated above.	Least contractor responsibility for costs; least preferred contract type but Completion Form is preferred over Level of Effort Form.	

*Not detailed in PH

Chart for PH 5.1.2, Selection of Contract Type

Contract Types (continued)

OTHER CONTRACTUAL DEVICES SPECIAL USES				
	Letter Contract	Indefinite Delivery	Ordering Agreement	Task Order Contracts
APPLICABLE	Postal urgently needs an immediate binding agreement so work can begin but time does not permit negotiation of a definitive contract.	Exact time of delivery unknown. Definite Quantity: quantity known, delivery unknown, short lead-time supplies. Requirements: precise needs or designated activities during a definite period not known initially. Indefinite Quantity: impossible to know precise quantities needed during a definite period and cannot commit beyond a minimum.	Not a contract! Use when there is a need to expedite future contractual actions or to authorize price discounts.	Use when general need for services are known but specific requirements have not been defined.
ESSENTIAL	Maximum Postal Service liability; specify type of definitive contract; as many definitive contract provisions as possible; other provisions required by PH 5.1.7.d.	Definite Quantity: delivery to designated points or upon order. Requirements: estimated total quantity; estimated maximum and minimum quantity where feasible; (if firm minimum can be stated, use Indefinite Quantity contract instead) maximum and minimum order where appropriate. Indefinite Quantity: stated maximum and minimum total quantity; maximum and minimum order where applicable. PM Clauses See PH 5.1.5f clauses.	(1) Description of supplies and services; (2) Method for determining prices; (3) Delivery terms and conditions; (4) Activities authorized to issue orders; (5) The point at which each order becomes binding; (6) The stipulation that failure to reach agreement on price is a dispute under the Claims and Disputes clauses. PM Clauses Refer to clauses prescribed for the type of contract represented by orders placed. (You must estimate the aggregate value of orders.)	(1) Description of scope of services; (2) placement of task orders by the contracting officer; (3) specified contract period; (4) a statement as to the maximum liability of the Postal Service. PM Clauses Refer to clauses prescribed for the type of contract represented by task orders.
LIMITATIONS	No other contract type suitable; definitive contract prior to (1) 180 days; or (2) 40% of production or performance; maximum liability no more than 50% total estimated cost of procurement.	Firm fixed price, fixed price with escalation, or fixed price with redetermination only.	May not state or imply any obligation to place future contracts or orders. May be changed only by modifying the agreement itself, not by modifying orders. Modified agreements are not retroactive to orders previously issued. Must be reviewed annually to determine whether it should be continued.	Task orders must be priced or state a ceiling amount.
APPROPRIATE	Responsible APWG Use should be greatly restricted.	None	None	None
REMARKS		Delivery on orders under the contract. Obligation of funds on orders and, where applicable, on contract only for stated minimum total quantity or definite quantity.	Except for mandatory ordering agreements, must obtain competition before placing an order, unless justified. See PH 4.3.	

Sample for PH 5.1.7, Letter Contracts
Sample Letter Contract

Sample Letter Contract

July 24, 19xx

Mr. H.R. Brown
Brown Repair Company
123 Main Street
Anytown, NY 99999-9999

Subject: Letter Contract 100000-87-Z-0020 for Emergency Repair and
Technical Enhancement of the Automated Mail Handling System
in Building 2A, 134 Main Street, Anytown, New York.

Dear Mr. Brown:

The terms, conditions, and provisions of this letter and its attachments constitute a contract.

It is the intent of the United States Postal Service (USPS) to definitize this letter contract with Brown Repair Company for the performance of work outlined in Tasks 1, 2, and 3 of your preliminary proposal dated July 23, 19xx, incorporated by reference into this letter contract. The date for completing the work is five weeks from contract award, as set forth in the schedule on page five of the preliminary proposal.

Upon acceptance of this letter contract, you are authorized to proceed with Task 1 as outlined in your proposal dated July 23, 19xx.

You are not authorized to make expenditures or to incur obligations in the performance of this letter contract exceeding \$70,000.

Limitation of Postal Service Liability

- a. You are not authorized to make expenditures or to incur obligations in performing this contract exceeding \$70,000.
- b. The maximum amount for which the Postal Service will be liable if this contract is terminated is \$70,000.

Contract Definitization

- a. A firm-fixed-price definitive contract is contemplated. You agree to submit a fixed-price or cost-reimbursement proposal as appropriate, and to negotiate with the contracting officer the terms of a definitive contract that will include:
 1. All clauses required by the USPS *Procurement Manual* on the date of execution of the letter contract;
 2. All clauses required by law on the date of the execution of the definitive contract; and
 3. Other mutually agreeable clauses, terms, and conditions.
- b. The schedule for definitizing this contract is as follows:

Sample for PH 5.1.7, Letter Contracts
Sample Letter Contract (continued)

1. Proposal submission date: August 3, 19xx
2. Beginning of negotiations: August 10, 19xx
3. Definitization target date: August 12, 19xx

c. If you and the USPS contracting officer cannot agree on a definitive contract to supersede this letter contract by the target date in paragraph b, or any extension of that date granted by the contracting officer, USPS may determine a reasonable price or fee in accordance with Chapter 5 of the *USPS Procurement Manual*. You may appeal this price or fee as provided in the *Claims and Disputes* clause. In any event, you must proceed with completion of the contract, subject only to the *Limitations of Postal Service Liability* paragraph above. After the date of the contracting officer's determination of price or fee, the contract will be governed by:

1. All clauses required by the *USPS Procurement Manual* on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as the contracting officer may determine under paragraph c;
2. All clauses required by law as of the date of the contracting officer's determination;
3. Other clauses, terms, and conditions mutually agreed upon; and
4. To the extent consistent with subparagraphs 1, 2, and 3, all other clauses, terms, and conditions included in this letter contract, except those that by their nature are applicable only to a letter contract.

Attachment 1 lists all provisions and clauses applicable to this letter contract and incorporates one by reference.

Execution and Commencement of Work

You must indicate acceptance of this letter contract by signing three copies and returning them to the contracting officer no later than July 28, 19xx. Upon acceptance by both parties, the contractor must proceed with performance of the work including purchase of necessary materials.

Sincerely,

R. B. Davis
Contracting Officer

ACCEPTANCE

Letter contract 100000-88-Z-0020 is accepted and agreed to.

Signature

Date

Attachments

Exhibit for PH 5.1.8, Ordering Agreements
Contracting Methods for Recurring Products and Services

**CONTRACTING METHODS FOR RECURRING
 PRODUCTS AND SERVICES**

Product/Service	Usual/Most Appropriate Contracting Methods
Technical Services	Ordering Agreements (large purchases) and Basic Pricing Agreements (small purchases)
Professional Services	Task Order Contracts
Supplies (office, plumbing, electrical, ADP paper, and the like)	Systems Contracts or Requirements Contracts
Commercial products (floor waxes, floor strippers) with no annual projections	Approved Products List
Commercial products for which Postal has annual projections	Requirements Contracts
Repair Parts	Multiyear contracts with specified delivery dates for needed quantities based on turn rates.

5.2 Cost Principles

5.2.1 General

Determining Cost Allowability in Special Cases

Costs are allowable if they meet the requirements of PM 5.2.3. If you find it difficult to determine whether a given cost meets those requirements, you may seek assistance from the Office of Procurement, Procurement Support Branch, Washington, D.C. See Procedure 5.3.3-VII, Request for Price or Cost Analysis Assistance.

5.2.4 Advance Agreements

Using Advance Agreements

Advance agreements on the treatment of costs apply to contracts under which contract price varies with the actual costs incurred by the contractor. These include cost-reimbursement contracts, incentive-fee contracts, and the materials portion of time-and-materials contracts. Common cost categories for which advance agreements may be useful in avoiding later disputes or disallowances are listed in PM 5.2.4.f.

Consider the following factors in determining whether the contractor's proposed treatment of costs is consistent with the cost principles of PM 5.2, and should be agreed to in advance:

1. *Industry practice.* How are such costs commonly treated in the industry? For example, travel and relocation costs are generally considered to be overhead items or general and administrative expenses in supply or production contracts, and are treated as indirect costs. In service contracts, however, they are considered direct costs.
2. *Contractor's normal practice.* If there is no one standard practice in its industry, how does the contractor normally treat these costs?
3. *Applicability to contract.* If the proposed method deviates from normal practice, does it make sense for this contract? For instance, a manufacturing company contracts to produce for the Postal Service a specialized piece of equipment that has little if any commercial application. Treating plant conversion and reconversion costs as direct charges may be appropriate in this case. Another example is that of a company awarded a contract to provide on-call maintenance for Postal Service equipment or facilities within a large geographic area. The contractor's normal practice is to charge no mileage costs for local service calls. Because the service area for this contract is so large, its proposal to treat travel as a direct charge makes sense.
4. *Significance of costs.* Are the anticipated costs significant enough to warrant review and monitoring during contract performance? The administrative burden of monitoring allowability of some costs may outweigh the risk of relying on the contractor's treatment.

Assistance on Advance Agreements

Consult the Procurement Support Branch at Postal Service Headquarters before entering into an advance agreement. This branch can help you assess the allowability, reasonableness, and allocability of specific costs and cost categories.

5.3 Price Evaluation

5.3.3 Proposal Analysis

I. Preparing to Use Price Analysis (5.3.3.b)

To be able to use the price analysis approach effectively, you should:

1. Acquire a thorough knowledge of the goods to be provided or the services to be performed.
2. Study the market conditions that prevail in areas where the items are to be manufactured or services are to be performed.
3. Research potential sources for the goods or services and recent or current prices paid for the same or similar items.
4. Know the business reputation of possible sources and the Postal Service's experience with them, particularly with respect to delivery of services or products of acceptable quality at reasonable prices.
5. Review the purchasing methods and pricing techniques used in the past for similar items, and any pricing problems experienced with the offeror or offerors involved in the present procurement.
6. Obtain a current independent cost estimate from the requiring activity.

Price Analysis Techniques

The "Hierarchy of Price Analysis Techniques" following this section summarizes the techniques listed below. Before you can effectively use primary or secondary comparison techniques, be sure that the prices you intend to analyze are in fact comparable. Use the checklist, "Establishing Comparability of Prices," for this purpose.

1. *Primary comparison techniques.* These techniques include competitive evaluation, comparison of current offers with one another, and evaluation of published prices (that is, prices established by law, catalogs, or market forces). Use one or more of these primary techniques whenever possible, but validate your conclusions using secondary or auxiliary techniques as appropriate to the dollar value of the procurement and the availability of other data. See Procedure II for a discussion of primary comparison techniques.
2. *Secondary comparison techniques.* Data used in these techniques include past quotes, previous contract prices, pricing data for similar requirements, cost estimating relationships, Postal cost estimates, and general market data. Although their best use is to support conclusions based on primary techniques, you can use a combination of secondary techniques to verify the reasonableness of an offer. See Procedure III for more information on secondary comparison techniques.
3. *Auxiliary techniques.* Techniques of value and visual analysis are only ways of assessing the price differences between items. You cannot use these techniques on their own to establish whether a price is reasonable because their outcomes are

highly subjective. They are valuable, however, in testing conclusions reached using primary or secondary comparisons or in supplementing cost analysis results. See Procedure IV, Auxiliary Pricing Techniques.

II. Primary Comparison Techniques (5.3.3.b)

There are two widely used primary comparison techniques for price analysis: competitive evaluation and published price comparison.

Competitive Evaluation

In its simplest form, competitive evaluation is a matter of arranging fixed-price offers for products or services in order of price and selecting the offer with the lowest price. For this method to be valid on its own, the following conditions must be met:

1. Specifications may not be unduly restrictive.
2. At least two offers must meet the requirements of the solicitation.
3. Offerors must compete independently.
4. The market must include many producers, none of whom is dominant and none of whom has an insurmountable advantage in responding to the Postal Service's need.

Even when all these conditions are met, any evidence that seems to refute a conclusion that the lowest price is fair and reasonable (for example, a wide variation in offered prices) should alert you to the need to use additional methods to verify your conclusions from the competitive evaluation.

Published Price Comparison

To rely on published prices, you must feel reasonably confident that the price list you are using reflects prevailing competitive rates and that suppliers' awareness of each other's prices was as effective as direct competition in establishing those prices.

Manufacturers frequently employ multitiered pricing strategies. They may use a series of catalogs with varying prices for different classes of customers, charging what they believe that segment of the market will bear. Some disguise their pricing strategy better than others. For instance, you might suspect multitiered pricing if a vendor handed you a published price list fresh off a laser printer. But would you accept a four-color brochure with obviously overprinted prices from a company whose pricing structure is unfamiliar to you and who claims that the new prices are just a quarterly update?

It is not unusual to see such a brochure. Your job in price analysis is to isolate the best terms offered to *any* customer and secure those terms for the Postal Service.

Prices Set by Law or Regulation

Comparing offered prices to prices set by law or regulation is useless because the latter prices are not competitively determined and cannot vary. However, you may use pricing that is based on, but not controlled by, legally established prices as a standard for comparison. In these situations, as in others in which published price comparison is used as a primary method for price analysis, you should use other techniques to verify your conclusions.

III. Secondary Comparison Techniques (5.3.3.b)

Historical Comparisons

This comparison technique is frequently used by the Postal Service. The bases of historical comparison include current prices for the same requirement, past prices paid for the same or similar requirements, and past quotations or offers received. When you use this technique, pay particular attention to whether prices paid previously were established by adequate competition. If not, do not use these prices as a standard of comparison unless other evidence indicates that they were in fact competitive (for instance, you find that the same prices were offered or paid in the presence of adequate competition). Beware of comparing the prices of dissimilar products or procurements. You may be able to adjust some historical data using Procedure V, Comparability Adjustment Techniques.

Comparisons Using Market Data

You can use newspapers, trade journals, and market indexes to validate assumptions, identify needed price adjustments, and even to make adjustments in some cases. For example, you could use the Producer Price Index (PPI) to convert a past price paid into today's dollars to compare it with a current offer. Indexes of all types are also useful in developing cost estimates for evaluating offered prices.

Cost-Estimating Relationships

These standards of comparison include rough yardsticks used for estimation, such as dollars per pound, dollars per square foot, dollars per loaded labor-hour, and the like. These yardsticks can help you quickly identify gross inconsistencies in pricing. You can also use them to establish a common denominator among dissimilar offers in order to make valid price comparisons. You can find standards for, or data on, these estimating relationships in published services such as the R.S. Means Company's construction standards.

Comparison with Postal Service Estimates

Before using this technique, investigate the basis for the estimate. The purchase request estimate can be a valid standard for comparison if:

1. It is based on a realistic engineering analysis. A realistic engineering estimate of what an item should cost could be one developed after study of the drawings, after physical inspection or teardown of a sample, or after analysis of similar work and projection of price based on the findings; or
2. The originator used a reasonable past purchase price, specifying the quantity purchased and the degree of similarity to the current procurement.

Compare actual prices paid with similarly constructed estimates for previous purchases of the same or comparable items before deciding whether to rely on this technique.

Secondary Comparisons as a Sole Basis for Determining Reasonableness

Many purchases are made noncompetitively because circumstances restrict or prohibit adequate competition. These include requirements reserved for minority business enterprises, emergency requirements, and requirements where competition is restricted because of a temporary shortage of offerors. In these cases, you must rely on secondary comparisons to determine whether the price of an offer is reasonable. Evaluate the offers you have, using as many secondary and auxiliary techniques as available data permit.

IV. Auxiliary Pricing Techniques (5.3.3.b)

The two basic auxiliary pricing techniques are value analysis and visual analysis. Both are qualitative and subjective approaches, whose utility is in helping you to draw distinctions between offers rather than to determine whether any of them is reasonable. Use value or visual analysis to supplement the information you have gathered by using the techniques in the preceding procedures. If conditions do not allow you to use primary and secondary comparison techniques, you must use cost analysis (see Procedure IX) as your main evaluation method.

Value Analysis

Value analysis is traditionally part of cost analysis. However, you may apply its principles several ways in price analysis. Using value analysis, you can assess the degree to which Postal or other estimates may be influenced by "value" considerations which adversely affect comparability, can judge the reason for price differences among previous purchases and current offers, and can estimate the value of an added feature.

In value analysis, you examine two aspects of each offer:

1. *Utility.* List the requirements and rate the offers, including any added features promising time or cost savings. A product or service that offers fewer features than another should have a lesser value; that is, a lower price.
2. *Aesthetics.* Identify aesthetic requirements and again rate the offers. If one offer's utility and aesthetic value is greater than another's, a price difference is clearly justifiable. However, aesthetic value alone is generally not a reasonable basis for a higher price.

Visual Analysis

Visual analysis is simply inspecting an item or drawings of an item to develop a rough estimate of its probable value. You may combine visual analysis with value analysis. This common-sense approach can give you perspective on your piecemeal evaluation by forcing you to look at the whole picture, and is particularly useful when you are faced with an unfamiliar product name. The best way to determine whether a "computer power center" should cost \$2,000 or \$200 may be to look at one (or better yet, to look at several).

V. Comparability Adjustment Techniques (5.3.3.b)

Rules for Use of Adjustments as a Basis for Award

1. You must anticipate the use of any adjustment technique before solicitation preparation and must disclose its application to competitors in the solicitation. The general counsel has repeatedly ruled that offerors must be advised of the basis for evaluation.
2. Any adjustment technique you use must be realistic. You must be able to support your expectations and forecasts.
3. You must apply adjustments uniformly to similar offers.

Estimated-Quantity Adjustment Techniques

When quantities are not fixed in the solicitation, offerors generally quote unit prices. To properly analyze unit prices, you must consider the probable quantity that the Postal Service will purchase. Adjust the offers as follows before competitive evaluation of prices quoted under indefinite-quantity, requirements, time-and-materials, and labor-hour pricing arrangements:

1. Establish a realistic estimate of the actual quantity to be purchased. (Document this as an estimated quantity in your solicitation.)
2. Apply the unit price to the estimated quantity during the evaluation process.
3. Compare the extended prices of the competitive offers, using competitive evaluation and other analysis techniques that do not conflict with the evaluation and award factors stated in the solicitation.

Estimated-quantity adjustments are particularly important when you have two or more estimated-quantity line items within one solicitation, as the following example shows.

Example: The Postal Service solicits offers on a regionwide requirements basis for light-duty trucks, specifying a need for 1/2-ton vehicles and 3/4-ton vehicles. You receive two "all-or-none" offers:

<u>Offeror A</u>		<u>Offeror B</u>	
1/2-ton	\$5,000	1/2-ton	\$6,000
3/4-ton	\$7,000	3/4-ton	\$6,500

A competitive evaluation of the unit prices alone indicates that Offeror A has the lowest price. However, by analyzing historical purchases and conducting a buyer survey, you had estimated that the actual requirement would probably call for 500 1/2-ton vehicles and 2,000 3/4-ton vehicles and defined those probable actual quantities as "estimated" in the solicitation. Adjustment for estimated quantities will affect the price evaluation and probably lead to the conclusion that Offeror B provides the best overall price. Remember that you must disclose to offerors estimated-quantity factors to be applied in price adjustments used for purposes of award in Section M, Evaluation and Award Factors, of the solicitation.

Assumed-Change (Trend Analysis) Techniques

Postal Service purchases often involve long-term contractual relationships. For instance, real property leases are routinely issued for five years or more. These and other multiyear purchases often provide for adjustments based on either actual cost experience or economic price adjustments. You must account for such price adjustments by making *assumed changes*, using your forecasting skills to predict the amount of change most likely to occur during the contract period. The assumed change must be reasonable and realistic, not arbitrary.

Some contracts contain economic price adjustment clauses, commonly called escalator clauses, which use price indexes to measure the allowable change in price over time. Price adjustments are computed by applying the index to a base (all or a portion of the offered price). If all offerors are required to use the same base, the index will have a uniform effect on prices. On the other hand, if the offerors can choose or influence the base, you may need

to use the index to convert all economic price adjustments to the same basis before competitive evaluation.

Make assumed-change adjustments as follows, specifying both the assumed change and the method for extending proposed prices based on that assumed change, in the solicitation (Section M):

1. Identify the change expected during the contract period, for example, 3 percent per year.
2. Extend the base price offered by the assumed percentage of change.
3. Adjust the price by that percentage.

The following example illustrates the application of an assumed-change adjustment to a multiyear lease.

Example: The Postal Service solicits offers for 10,000 square feet of office space for a term of five years. You receive two offers with unit prices as follows:

<u>Offeror A</u>	<u>Offeror B</u>
\$10.00/sq.ft./year	\$9.95/sq.ft./year (low)

As disclosed in the solicitation, the Postal Service adjusts the bases for services and utilities using an assumed change of 3 percent compounded annually. The bases proposed and accepted are:

<u>Offeror A</u>	<u>Offeror B</u>
\$3.00/sq.ft.	\$4.50/sq.ft.

The offered price per square foot is adjusted by calculating the additional payment that would be due if the change is 3 percent each year, dividing the total additional payment by the lease term (five years) and adding the calculated amount to the lease price. In the example, the adjusted prices for evaluations using competitive evaluation are:

<u>Offeror A</u>	<u>Offeror B</u>
\$10.19/sq.ft./year (low)	\$10.24/sq.ft./year

As you can see, the result of competitive evaluation is altered by the price adjustment.

Product Variance Adjustment

You may adjust the prices of offers whose features deviate from the requirements in order to compare them with conforming offers. Offers may include added features not required by the Postal Service. Added features are usually luxuries exceeding the Postal Service's real requirements. If they are separately priced, exclude them from consideration. If they are integral to the proposal, evaluate the entire proposal against competitive offers without adjusting for them.

Occasionally a proposal contains an added feature that could save the Postal Service time or money. Evaluate such a proposal as follows:

1. If the added feature is not separately priced but could be, hold discussions with the offeror and request a separate price for the added feature, or a price for the proposal without the added feature.
2. If the added feature is integral to the proposal, use appropriate methods of cost and price analysis to arrive at an independent cost estimate for it.
3. Weigh the offeror's price or your cost estimate against the time or cost savings from the added feature to determine whether it is worth the extra cost.

If an offered product or service is missing a required feature, adjust for the product variation as follows:

1. List the required features of the model product.
2. Identify the missing features of the product offered.
3. Hold discussions with the offeror and request a separate price for the missing features or a new price for a proposal including them. If the offeror is unable to quote a price, use price and cost analysis to determine a reasonable price or cost for the missing features.
4. Add the price or cost of the missing features to the offered price and perform a competitive evaluation.

Adjustments for missing utility services are shown in the following example.

Example: The Postal Service solicits offers for 10,000 square feet of space, requesting janitorial service and all utilities. You receive two offers:

<u>Offeror A</u>	<u>Offeror B</u>
\$10.00/sq.ft./year fully serviced, all utilities included	\$5.50/sq.ft./year no janitorial; Postal Service to pay for electricity separately

Obviously, the two offers are not comparable. Before a valid comparison can be made, you must first determine the value (per square foot) of the service that B is not providing and then add that amount to the unit price of Offer B. Only then will the two prices be comparable.

In appropriate circumstances, the product variance adjustment can include Postal Service administrative costs if intent to use such an adjustment is disclosed in the solicitation. For instance, in the example above, the administrative cost of obtaining a separate contract for janitorial service and utilities could be added to B's offer.

VI. Price Analysis Report (5.3.3.b)

You must document the price analysis you perform for any procurement over \$2,000 by one of the following methods and include it in the official contract/order file. The length and detail of your report will depend on the complexity and dollar value of the procurement.

Methods of Documentation

1. *A separate report.* Use a separate report when you are not required to write a price negotiation memorandum, and to prepare for negotiations of large procurements of a complex nature.

The discipline of writing the report will require you to sift through the data, reconstruct the process and its events, restate key issues and decisions, and state your conclusions based on these findings. You will then be better able to develop and explain your negotiation objective, and to conduct negotiations. You will know the range within which a fair and reasonable price should fall, and will be able to refute an offeror's arguments for higher prices, defending your position with specific and convincing facts.

2. *A part of the price negotiation memorandum.* See Procedure 4.4.3, Preparing a Memorandum of Negotiation.

Content

Regardless of format, your report must include:

1. The information and information sources that you used.
2. The weight you gave to each element of information and why.
3. The logic you used to support your determination that the price is or is not reasonable.

A sample of a separate report prepared for negotiations, "Price Analysis Report for Guard Service Rates," follows this section.

VII. Request for Price or Cost Analysis Assistance (5.3.3.b)

Request assistance from the Procurement Support Branch at Postal Service Headquarters when you:

1. Encounter difficulty with price or cost analysis.
2. Require audit services from sources outside the Postal Service.
3. Need other forms of assistance, such as rate reviews or on-site consultation at negotiation sessions.

Documentation for the Request

Document your request for price or cost analysis assistance from any source, using the format for this procedure, "Request for Pricing". Requests for price analysis must be accompanied by the following documents:

1. One copy of the proposal for which pricing assistance is requested.
2. One copy of the summary of proposals.
3. Pertinent data on previous purchases.
4. One complete set of the data package.

Requests for cost analysis must be accompanied by:

1. Three copies of the technical proposal.
2. Three copies of the cost/price proposal.
3. Two copies of the Request for Proposal.
4. The name of the Postal Service program manager.
5. The name of the offeror's point of contact.
6. Two sets of the data package.
7. If the request is for a contract modification, furnish a detailed cost breakdown of the change, showing the costs of additions and deletions separately, to measure total cost impact of the change.

Processing Time

Allow as much time as is feasible for assistance from the Procurement Support Branch, as the amount and quality of research the pricing specialist can perform depends on how soon you need a response. Establish realistic and mutually acceptable response times for each request with the Procurement Support Branch Manager.

Allow a *minimum* of 45 days for completion of an outside agency audit. When your requirement is urgent, discuss other methods of obtaining the information you need with the Procurement Support Branch Manager. These methods may include on-site reviews by Postal Service analysts, reductions in the scope of the analysis, and issuance of a limited report.

VIII. Methods of Cost Estimating (5.3.3.d)

You must understand a company's estimating methods and procedures to be able to analyze its estimated costs accurately. Be aware that all methods require judgments that may greatly affect the soundness of an estimate, and understanding cost estimating methodology is not a substitute for careful examination of each estimate. Most firms use one or more of the following three methods.

Round Table Estimating

Representatives of departments such as engineering, maintenance, contracts, purchasing, and accounting are brought together to develop the costs on the basis of experience, knowledge of the product, and knowledge of market conditions. The estimate is generally completed without benefit of detailed drawings or bills of materials and with very limited information concerning specifications. Standard costs are usually available for a large percentage of the parts. This type of estimating has the advantage of speed of application and is relatively inexpensive to perform.

Estimating by Comparisons

The estimator and representatives of the departments concerned in the proposal select parts or processes comparable with those required for the task being estimated. They adjust the known costs of these similar parts or processes by adding or subtracting material and time costs judged to be needed for the new task. This method often is used when the requirements for a new product are very similar to those of a past or current product and when relatively few adjustments need to be made in estimating (the product of this method is often called an "engineering estimate").

Detailed Estimating

This method is characterized by a thorough, detailed analysis of all components, processes, and assemblies that results in requirements for labor, tooling, material, and additional capital items. The application of labor rates, material prices, and overhead to the calculated requirements translates the estimates into dollars. This type of estimating yields complete calculations, records, and quotations that are available for future use. Cost estimators usually rely on personnel in:

1. Engineering and manufacturing, for estimates for direct labor hours and special tooling costs.
2. Purchasing, for estimates of material and subcontract costs.
3. Project offices, for estimates of direct travel and other project direct labor hours.
4. Drafting or data control, for estimates of costs of data items.
5. Facility engineering, for estimates of any facilities costs.

IX. Cost Analysis (5.3.3.d)

When you prepare a cost analysis you must look at both the quantity of resources the offeror proposes to use (labor-hours, units of materials, types of supplies, number of trips, and the like) and the price tag or unit cost of each resource (from salary schedules, material unit costs, per diem rates, mileage rates, and so forth). Use the "Checklist for Analysis of Specific Cost Elements" and the discussion below to aid in analyzing individual cost elements.

For the purposes of cost analysis, the contractor's costs can be broken down into three major areas: direct costs, indirect costs, and profit.

Direct Costs

Direct costs are further broken down into four major categories: materials, labor, tooling, and other costs.

1. **Materials.** Direct materials include raw materials, purchase parts, and subcontracted items required to manufacture and assemble completed products. Direct material costs are the costs of material actually used in making a product.
 - a. Analyze material costs using one or more of the following:
 - (1) A statistical estimate.
 - (2) A priced bill of materials that is the basis for the average unit material costs for the procurement.
 - (3) A priced bill of materials for a preceding item or lot modified to develop an average estimate for the present procurement.
 - (4) A projection for the average material cost per unit on a preceding lot or contract.
 - b. Review material estimates to verify that proposed types and quantities of material are directly related to and required in contract performance. Confirm that:
 - (1) Types and quantities proposed are reasonable and realistic.

- (2) Costs are consistently treated in accordance with the offeror's normal practices.
 - (3) Costs are traceable to, and supported by, bills of material, vendors' quotes, proposed subcontracts, and similar documentation.
 - (4) Costs are reasonable in view of actual prices, with appropriate adjustment for trade discounts, refunds, rebates, allowances, prompt payment, and other credits.
- c. Look for these problem areas in analysis of direct material estimates and costs:
- (1) Inconsistency between procedures used in recording cost and those used in proposing costs.
 - (2) Inconsistent accounting treatment in charging direct material costs.
 - (3) Failure to offset costs with credits such as discounts, refunds, rebates, and allowances.
 - (4) Inadequate system for estimating material costs.
 - (5) Inadequate inventory controls for materials on hand or available in contractor's system.
 - (6) Lack of competitive procurement on the part of vendors or subcontractors.
2. **Labor.** Direct labor means the labor involved in engineering, fabrication, assembly, and quality assurance of the end product. The offeror prepares direct labor estimates by estimating the time required for every direct labor process or operation needed to fulfill the contract, using history, labor standards, or a combination of the two. It then applies the wage rates it believes to be competitive in its labor market area to determine direct labor costs.
- a. Review both the direct labor estimates and costs to ensure that:
- (1) The total labor estimate is reasonable in light of the work requirements.
 - (2) The estimate contains the proper classifications and skills mixes.
 - (3) The individual rates or costs proposed are appropriate to the type of effort (for instance, an offer on an emergency project requiring substantial overtime or hazardous work might use above-average wage rates for the area to attract necessary workers, depending on the local labor supply).
 - (4) The total amount paid is consistent with the established policy of the organization.
 - (5) The total amount paid is comparable to that paid for similar work in the labor market in which the organization competes for labor.
- b. Look for these problem areas in analysis of direct labor estimates and costs:
- (1) Unclear distinction between direct and indirect labor.
 - (2) Consultants' fees included in direct labor instead of in other direct costs.
 - (3) No information provided on current pay scales, or use of scales whose reasonableness has not been evaluated.

- (4) Offeror's accounting system inadequate to track and report labor costs accurately.
3. **Tooling.** Tooling refers to special tooling such as jigs, dies, fixtures, and test equipment used in production of end items. It does not include machines, perishable tool items, or small hand tools. Analyze both the material and labor cost elements of tooling as applicable. Many offerors purchase all or most of their tooling requirements, so little labor is involved. If the offeror does manufacture special tooling, review the estimate of labor hours, labor rates, and overhead rates applied to its production.
4. **Other costs.** Other direct costs are those costs that are allocable to a project but that do not fall within the categories of direct labor, tooling, or direct material. Examples of other costs are special insurance; special travel expenses; preservation, packaging, and packing; plant rearrangement; start-up costs; consultants' fees; material handling charges; certain clerical salaries; shop supplies; transportation costs; plant protection; royalties; computer expenses; and telephone and telegraph expenses.
 - a. Review other direct costs to determine whether:
 - (1) Costs are properly classified according to the offeror's accounting practices and system.
 - (2) Data supporting the estimates are valid, current, and applicable.
 - b. Look for these problem areas in analyzing other direct costs:
 - (1) Unclear distinction between direct and indirect costs.
 - (2) Inconsistencies in charging other direct costs to Postal contracts and to non-Postal contracts.

Indirect Costs

Indirect costs are sometimes called "overhead" or "burden" costs. Unlike direct costs, which are allocable to one contract, these costs are overall expenses necessary to the operation of the company as a whole. Some overhead expenses such as those for material purchasing and inventory functions, tooling, and selling are pooled and apportioned among the activities they support by use of an indirect cost rate. The broadest overhead pool is general and administrative (G&A) expenses, which is apportioned among all of a company's activities. Common types of indirect cost are:

1. Salaries and wages for indirect labor, including supervisory, administrative, and clerical personnel in the plant or operation.
2. Employee benefits such as leave, holidays, suggestion awards, vacations, employment insurance, FICA tax, group insurance, and pension funds.
3. Supplies such as operating supplies, maintenance supplies, stationery printing, and office supplies.
4. Utilities such as telephone, heat, light, and power.
5. Fixed charges such as depreciation on plant and equipment.

Use trend analysis techniques to adjust indirect costs so you can compare past, present, and future expenditures. Look at:

1. The indirect dollars the company has been spending and the reasonableness of continued expenditures at that level.
2. The dollar volume of the activities to which the indirect pool has been charged (called the base) and the likelihood of change during the period of contract performance.

Develop an estimate of indirect costs for your contract pricing objective from the information you have gathered from trend analysis. As a rule of thumb, if the base is increasing, the indirect cost, or overhead, rate should be decreasing, and vice versa.

Establishing overhead rates for a non-fixed-price contract is a necessary part of negotiations with an offeror. Even under fixed-price contracts, overhead will be a major negotiation topic if the proposal is based on cost instead of market prices.

In reviewing price or cost data relating to overhead rates, you should make sure that the offeror states:

1. Whether the proposed overhead rates are current.
2. For what period the rates were established.
3. Whether proposed rates are the result of negotiation or audit by the Postal Service. If the proposed rates have not been approved by the Postal Service, the offeror must provide:
 - a. A schedule of all major expense categories for support of the direct labor force.
 - b. The dollar volumes of the bases to which the proposed overhead rates apply.

Profit

Profit objectives should reflect the tasks, risks, and investment required by the contractual work. The offeror should not expect to receive the same profit percentage on all contracts. See Procedure XI, Analyzing Profit Factors, for more information.

X. Conducting Subcontract Price or Cost Analysis (5.3.3.f.)

Applicability

You should perform subcontract price or cost analysis only when you are conducting cost analysis on the prime contractor, and then only if the analysis is necessary to determine the reasonableness of the proposed contract or subcontract price. In assessing the need for subcontractor analysis, consider the adequacy of the prime contractor's price or cost analysis, and the size of the subcontract in relation to the prime contract. Choose cost rather than price analysis in the rare situation where price competition is inadequate and no price analysis technique will yield a fair and reasonable price.

Approach

Conduct subcontract price or cost analysis following the same procedures as you would for a prime contract. Remember that there is no direct relationship between the proposed subcontractor and the Postal Service, and any communications with a proposed subcontractor should be through the prime contractor. In certain cases, the subcontractor may consider a portion of its cost proposal to be confidential and proprietary information. If the subcontractor so states in writing, you may, with the permission of the prime contractor, conduct discussions and request additional supporting information directly from the

subcontractor. Be careful to limit these direct discussions to the information that the subcontractor stipulates is proprietary and confidential.

XI. Analyzing Profit Factors (5.3.3.g)

The offeror's estimated rate of profit is only one factor considered in cost analysis of fixed-price contracts. Offerors sometimes understate their expected rate of profit, or entice an unwary negotiator to focus solely on the rate of profit during analysis and negotiation, ignoring other factors that in the end can lead to a greater net return. The most important of these is the allowance for contingencies in the cost portion of the proposal, which contains the offeror's prices for the performance risks it is assuming. If these risks are overpriced, the offeror will reap profits far exceeding the amount it actually proposes in the line item for profit.

Common Factors

Consider the following factors in determining a reasonable figure for profit.

1. *Contractor effort.* Assess the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. Modify the following measures of contractor effort to accommodate differences in the cost categories used by prospective contractors:
 - a. *Material acquisition* measures the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Look at the complexity of the items required, the number of purchase orders and subcontracts to be awarded and administered, whether established sources are available or new (or second) sources must be developed, and whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Expected profit should correspond to the managerial and technical effort involved.
 - b. *Direct conversion labor* measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Look at the diversity of engineering, scientific, and manufacturing skills required and the amount and quality of supervision and coordination needed to perform the contract task.
 - c. *Conversion-related indirect costs* measure how much indirect costs contribute to contract performance. Apply the same rate of profit to direct and indirect labor costs. Identify other indirect costs that contribute significantly to contract performance, and allow a profit on them.
 - d. *General management* measures the contribution of the prospective contractor's overhead expenses to contract performance. Look at how labor in the overhead pools would be treated if it were direct labor, whether cost elements in the pools are routine expenses or contribute directly to contract performance, and whether the elements require unusual or simply routine managerial effort and attention.
2. *Contract cost risk.* Gauge the degree of cost responsibility and associated risk that the prospective contractor will assume under the contract type contemplated. The

contract type chosen should take into account the risks involved in timely, cost-effective, and efficient performance. See PM and PH 5.1.2 on selecting a contract type. Compensate contractors in proportion to risks assumed.

3. *Federal socioeconomic programs.* Is the prospective contractor entitled to special consideration under Federal socioeconomic programs, such as those involving small and minority-owned business concerns? Greater profit opportunity should be provided contractors who have displayed unusual initiative in these programs.
4. *Capital investments.* How much do contractor investments contribute to efficient and economical contract performance?
5. *Cost control and other past accomplishments.* Allow additional profit opportunity to a prospective contractor who has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, evaluate the benefits to the Postal Service in follow-on work of offeror proposals to improve productivity and reduce costs, and increase the allowance for profit accordingly.
6. *Independent development.* Provide the contractor with additional profit opportunities for independent development efforts relevant to the contract requirement.
7. *Financial assistance from the Postal Service.* If the Postal Service is partially financing the contract work through progress payments or other forms of financial assistance, reduce the profit allowance proportionately.

Additional Factors

You may find the following factors pertinent to some cost analyses.

1. *Innovative solutions.* Reward a contractor who has developed a product or provided a service that has benefits to the Postal Service not anticipated in the solicitation. Examples of such benefits are a secondary, unplanned use for a product or service; significantly increased reliability over that required; or simplified diagnosis and repair of equipment.
2. *Past performance.* Maintain any additional incentive previously granted to a contractor who has performed exceptionally on previous Postal Service contracts, but decrease the profit opportunity for one whose past performance was poor in terms of timeliness, quality, or cost control. Take into account the complexity of the requirement and associated difficulties in evaluating past performance.
3. *Other factors.* Examples of other factors that may be appropriate in the evaluation of profit include unpriced standby capabilities, emergency or short lead time requirements, the predicted variance in the cost estimate, the assumption of risks over and above those required in the solicitation, and unique capabilities developed at the contractor's own expense.

XII. Handling Defective Cost and Pricing Data (5.3.3.h)

Price Adjustment

In deciding whether or not to adjust a contract price because of defective data, you should review the contract negotiation record and answer three questions.

1. *Is there enough money involved to make a recovery effort worthwhile?*

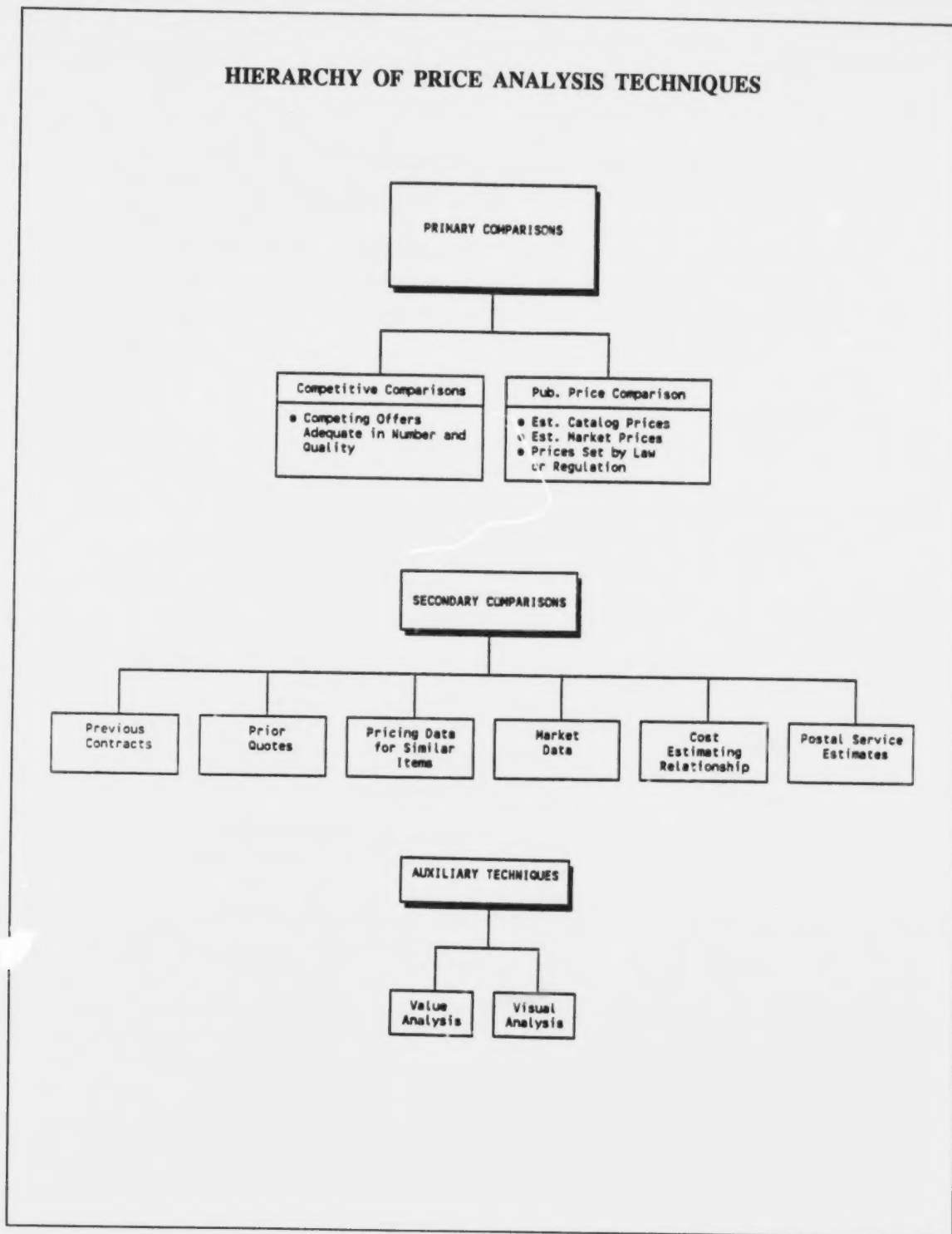
2. *Are the defects in the data significant enough to warrant a price adjustment?* Sometimes data appear defective because they are slightly out of date, but consider that overhead expenses and production records may not be reasonably available except on normal periodic closing dates. Also, the data on numerous minor material items, each of which by itself would be insignificant, may be reasonably available only as of a cutoff date prior to agreement on price, because the volume of transactions makes the use of any later date impractical. Moreover, except where a single item is used in apparently substantial quantities, the net effect of any changes to the prices of minor items is probably insignificant.

Changes in the labor base or in prices of major material items are generally significant, but their effect on contract price depends on the size and nature of the purchase.

3. *If so, did you rely on the defective data in determining the contract price?* You are not expected to reconstruct the negotiation to prove reliance, because the natural and probable consequence of defective data is an increase in the contract price in the amount of the defect plus the related burden and profit or fee. Unless there is evidence in the contract negotiation record that you did not rely on the defective data, you are justified in reducing the contract price by the aggregate of these amounts.

You may request support in the evaluation of defective cost or pricing data from the Procurement Support Branch at Postal Headquarters. See Procedure VII, Request for Price or Cost Analysis Assistance.

Chart for PH 5.3.3 -I, Preparing to Use Price Analysis
Hierarchy of Price Analysis Techniques



Checklist for PH 5.3.3 -I, Preparing to Use Price Analysis
Establishing Comparability of Prices

ESTABLISHING COMPARABILITY OF PRICES

<u>Step</u>	<u>Considerations</u>
1. Select items or prices for comparison	Is this particular comparison valid? Are better comparisons available from data base?
2. Identify product and price-related differences	Are the items or services compared the same? Are there any discrepancies in terms and conditions which affect price? How do the environments shaping the respective prices differ?
3. Determine the precise effects of the differences	How do the noted differences affect prices? How substantial might the differences be?
4. Select and apply method for adjustment (see Procedure V)	Can resources such as the Producer Price Index be used to establish comparability? Must some more sophisticated manipulative technique be applied?
5. Make comparison	Have all price-related differences been accounted for? Have I developed a common base for comparison? If not, to what extent is the comparison still valid? Should it be discounted?

Sample for PH 5.3.3-VI, Price Analysis Report
Price Analysis Report for Guard Service Rates

PRICE ANALYSIS REPORT FOR GUARD SERVICE RATES

- Current Situation:** Security guard services at the locations included in the subject procurement are currently being performed by ABC Security at the rate of \$8.93 per hour.
- Postal Estimate:** The Postal estimate of a reasonable contract price is \$9.12 per hour. This estimate was based primarily on last year's price and was escalated by the CPI.
- Fact-Finding:** The Contract Branch recently awarded the following contracts on a competitive basis in the Metropolitan Area. Each contains the same Wage Determination (#79-623 Rev.-2) as Contract XXXXXXXXXX:

<u>Contract No.</u>	<u>Location</u>	<u>Contractor</u>	<u>Hourly Rate</u>
XXXXX-XXXXX	Gore Plant	Contractor A	\$8.45
XXXXX-XXXXX	Capital View	Contractor A	\$8.04
XXXXX-XXXXX	722 Building	Contractor B	\$8.63
XXXXX-XXXXX	1211 Taylor St.	Contractor C	\$8.38
XXXXX-XXXXX	Central Heating	Contractor A	\$8.29
XXXXX-XXXXX	Capital Mall	Contractor C	\$7.98

- Market Analysis:** The Office of Contracts recently conducted a survey to determine the basis for a reasonable price for a security guard contract. It was determined that the hourly rate stipulated by the Wage Determination included in the contract, multiplied by 160-165%, reflected the market rates in this area. Applying this method to our procurement yielded the following results.

<u>Hourly Rate Contained in Wage Determ. 79-633 (Rev.-2)</u>		<u>Percentage</u>		<u>Projected Hourly Rate for Contract</u>
\$5.08	x	1.60	=	\$8.13/hr.
\$5.08	x	1.65	=	\$8.38/hr.

- Discussion:** The rate in paragraph 1 was negotiated under the minority program at a time when USPS policy on minority contracts was to allow a premium of up to 10 percent above the current market rate. However, USPS no longer adheres to this policy. Thus the current rate, after adjustment, would be \$8.12. The wage rate has increased by six percent in the last year. If the wage portion of the past contract price (\$4.79) is multiplied by this factor, and the remainder by three percent (the PPI increase), a price of \$8.60 is obtained.

Sample for PH 5.3.3-VI, Price Analysis Report
Price Analysis Report for Guard Service Rates (continued)

The Postal estimate in paragraph 2 is based on last year's price, which was inflated. If the differential is removed and the same percentage increase used, the resulting rate is \$8.28. The rates in paragraph 3 were competitively determined and reflect the current marketplace in this area. As tabulated, the average wage rate in these contracts is \$8.40/hour.

This rate takes on even greater importance when compared to the range projected in paragraph 4. The formula used resulted from a nationwide survey. Thus, the rates resulting from fact-finding (paragraph 3) and market analysis (paragraph 4) seem to lend support to each other. The current rate adjusted as discussed above, also indicates a price within the same range.

6. **Summary:** For the purpose of establishing an acceptable price range for this procurement, every attempt should be made to negotiate a wage rate in the range of \$8.13 to \$8.38 per hour. (The \$8.60 rate is not considered reasonable in light of the market rates otherwise indicated.)

**Format for PH 5.3.3-VII, Request for Price or Cost Analysis Assistance
Request for Pricing**

REQUEST FOR PRICING FORMAT	
Date:	From:

Part - I To Be Completed By Requestor

Contractor Name	
Contract/Solicitation Number	Total Contract Dollar Amount
Modification Number	Total Modification Dollar Amount
Type of Contract	Period of Performance
I. Type of Request (check one) ☐ Price Analysis ☐ Cost Analysis ☐ Other (explain) _____ (Discuss with Manager)	
II. Processing Time For reports due earlier than the standard 45 calendar days, indicate report due date. The head of the procuring activity must approve this request. Report Due Date: _____ Approved: _____ (Head Procuring Activity)	
IV. Name, Location, and Telephone Number of USPS Technical/Project Manager _____ _____	

Part II - To Be Completed By Procurement Support Branch

Analyst Assigned	Case File Number
Additional Information/Instructions	
Follow Up (Analyst must list date and type of notification given to the requestor, e.g., changes to report schedule, date, clarification, etc.) _____ _____	

Checklist for PH 5.3.3-IX, Cost Analysis
Checklist for Analysis of Specific Cost Elements

CHECKLIST FOR ANALYSIS OF SPECIFIC COST ELEMENTS

Use the following checklists as a tool to aid in more thorough analysis of individual elements of cost.

Analysis of Direct Labor Costs

1. Checklist: Direct Labor Analysis

Completed	Does Not Apply	
_____	_____	a. Determine the adequacy of information the offeror presents on proposed direct labor.
_____	_____	b. In the case of renewal or continuation award, determine if any advance agreements were established in previous years. If so, does the proposal under review adhere to them?
_____	_____	c. Check currency of position description and pay scales.
_____	_____	d. Verify that proposed salary rates are based on the individual's regular compensation under the policy of the offeror.
_____	_____	e. If established pay scales are not available, determine the basis used to estimate salaries and assess whether base salaries are reasonable under the circumstances.
_____	_____	f. If labor classes (technician, clerical, and so fourth), rather than position descriptions or job titles are specified, evaluate the reasonableness of the method used to compute average rates for the classes.
_____	_____	g. If inflation factors or other methods of estimating future labor increases are used, determine the allowability of their use.
_____	_____	h. If the labor of a subcontractor, consultant, or other outside source is included, determine the allowability of applying an indirect rate to this labor.
_____	_____	i. Determine whether direct charging of normal indirect labor costs (fringe benefits such as vacation, holiday, and sick leave) has resulted in any duplication of labor charges.

Checklist for PH 5.3.3-IX, Cost Analysis
Checklist for Analysis of Specific Cost Elements (continued)

2. Checklist: Direct Material Analysis

- | Completed | Does Not
Apply | |
|-----------|-------------------|---|
| _____ | _____ | a. Evaluate the adequacy of the data submitted. |
| _____ | _____ | b. For a follow-on or repeat contract, compare proposed amounts with amounts used on the prior contract or in previous years. |
| _____ | _____ | c. If a detailed schedule of materials is submitted, compare the prices of the costliest items to vendor quotes, purchase offers, or tenders, as available. |
| _____ | _____ | d. If a detailed schedule is not available, evaluate the rationale for amounts proposed. |
| _____ | _____ | e. Confirm that credit has been given for such offsets as discounts, rebates and allowances. |
| _____ | _____ | f. Assess the appropriateness of method used to estimate spoilage, rework, and returns to vendors. |
| _____ | _____ | g. Be sure that no material costs treated as direct charges have been included in an indirect cost pool. |
| _____ | _____ | h. If any used or surplus material is to be furnished, determine whether its condition is reflected in the material estimate. |
| _____ | _____ | i. Determine whether rental charges for use of Postal facilities or equipment are proper. |
| _____ | _____ | j. Find out if the company proposes to procure material and supplies competitively. |

3. Checklist: Analysis of Other Direct Costs

a. Subcontracts

Review data supporting the cost or price analysis made by the offeror before accepting the proposed subcontract. Your specific review tasks are to:

- | Completed | Does Not
Apply | |
|-----------|-------------------|--|
| _____ | _____ | (1) Obtain a listing of subcontractors, review their cost or price proposals, and evaluate the adequacy of the offeror's review. |
| _____ | _____ | (2) When no cost or price analysis has been performed by the offeror or when it is considered inadequate, evaluate to the extent necessary the reasonableness of the cost items in the subcontract proposal. |

Checklist for PH 5.3.3-IX, Cost Analysis

Checklist for Analysis of Specific Cost Elements (continued)

b. Travel and Transportation Costs

Confirm that these costs are allocable to the contract and that they are reasonable.

You should:

Does Not
Completed Apply

- _____ (1) Determine whether costs are presented in sufficient detail. Request additional documentation if necessary.
- _____ (2) Find out whether the organization has an established travel policy, and whether proposed costs are consistent with that policy.
- _____ (3) Verify that commercial air transportation costs are charged at less than first-class rates.
- _____ (4) Determine the reasonableness of car rental costs.
- _____ (5) Review and determine the allowability of subsistence costs.
- _____ (6) Evaluate the reasonableness of mileage allowances for use of personal cars.

c. Automated Data Processing Costs

Your specific review tasks are to:

Does Not
Completed Apply

- _____ (1) Determine whether costs are presented in sufficient detail. Request further documentation when necessary.
- _____ (2) Evaluate the reasonableness of the costs compared to established commercial rates or standard rates and charges approved by Postal Service auditors.

d. Consultants' Costs

Review tasks include:

Does Not
Completed Apply

- _____ (1) Establish that the type of service to be provided by a consultant is consistent with Postal Service *and* company policy.
- _____ (2) Determine whether costs are presented in sufficient detail to permit evaluation.
- _____ (3) Evaluate the need for the type of services proposed.

Checklist for PH 5.3.3-IX, Cost Analysis
Checklist for Analysis of Specific Cost Elements (continued)

- _____ (4) Evaluate the reasonableness of proposed costs.
- _____ (5) Verify that the offeror's employees are not performing as consultants.
- _____ (6) Verify that fringe benefit costs have not been included on consultant costs.
- _____ (7) Determine whether overhead rates have been applied to proposed consultants' costs. (Generally, only a portion of these costs, if any, should be included in the normal indirect cost pool).

e. Meetings and Conferences

Meeting and conference costs are incurred by offeror personnel only when attending meetings with Postal personnel to coordinate contractual work and eliminate possible performance problems. Your tasks are to:

Does Not
Completed Apply

- _____ (1) Determine whether proposed costs are presented in sufficient detail.
- _____ (2) Evaluate the relationship between attendance at the meetings and contract work requirements.
- _____ (3) Study the documentation supporting proposed costs and evaluate their reasonableness.

Chapter 6

Contract Administration

6.1 General

6.1.1 Responsibilities

Designating a Contracting Officer's Representative (COR) (6.1.1.b)	6.1-1
Sample 1: COR Designation Letter	6.1-8
Sample 2: Notification Letter to the Contractor	6.1-10

6.1.2 Contract Administration Functions

I. Preparation of Contract Management Plan: General Guidelines	6.1-2
II. Contract Administration Checklists	6.1-3
Guideline: Common Elements of Contract Administration Checklists	6.1-11
Sample: Format for Phase I—Contract Performance Preliminaries	6.1-12
III. Simple Project Management Charts	6.1-3
Sample 1: Bar Chart for Startup of a Production Contract	6.1-13
Sample 2: Milestone Chart for a Training Contract	6.1-14
IV. Program Evaluation Review Technique (PERT)	6.1-4
Sample: Simple PERT Network	6.1-15
V. Critical Path Method (CPM)	6.1-6
Sample: Simple CPM Network	6.1-16
VI. Contractor Advertising of Postal Service Work	6.1-7

6.2 Contract Performance

6.2.1 Postaward Orientation

Holding a Postaward Orientation Conference	6.2-1
Decision Aid: Should I Hold a Postaward Orientation Conference?	6.2-10
Sample 1: An Alternative: The Postaward Orientation Letter	6.2-11
Sample 2: Checklist/Record for Postaward Orientation Conference	6.2-13
Sample 3: Memorandum for the Record	6.2-i6

6.2.2 Record Keeping

I. Documenting Oral Communications	6.2-2
Sample: Oral Communications Record	6.2-17
II. Closing Out a Completed File	6.2-2

	Checklist: Contract Closeout Checklist—Fixed-Price and Cost-Type Contracts	6.2-19
	Sample 1: Notification of Closeout Actions—Fixed-Price Contracts	6.2-21
	Sample 2: Notification of Closeout Actions—Cost-Type Contracts	6.2-22
	III. Storing and Retaining Contract Files	6.2-4
6.2.3	Contract Monitoring	
	I. Contractor Reporting	6.2-5
	II. Guidelines for Review of Contractor Submittals (6.2.3.c)	6.2-6
	Sample 1: Submittal Tracking Sheet	6.2-23
	Sample 2: Transmission Sheet for Contractor Submittal	6.2-24
	Sample 3: Notification to Contractor	6.2-25
	Checklist: Approving Substitutions on Submittals	6.2-26
6.2.5	Right to Adequate Assurance of Performance	
	Notices to the Contractor	6.2-7
	Sample 1: Notice to Re-establish a Delivery Date	6.2-27
	Sample 2: Notice of Forbearance	6.2-28
	Sample 3: Demand for Adequate Assurance Notice	6.2-29
	Sample 4: Notice of Impending Termination	6.2-30
6.2.6	Anticipatory Repudiation	
	Guidelines on Anticipatory Repudiation	6.2-8
6.3	Quality Assurance	
	I. Definitions	6.3-1
	II. Actions in Response to Nonconforming Supplies or Services	6.3-1
	III. Warranty Administration	6.3-2
6.4	Payments and Financing	
6.4.3	Payment	
	Prompt Payment Documentation	6.4-1
6.4.5	Progress Payments	
	I. Progress Versus Partial Payments	6.4-2
	Checklist: Payments Under Clause 1-3, Progress Payments	6.4-5
	II. Approval of Individual Progress Payments	6.4-2
	III. Approval of New Liquidation Rates (6.4.5.d.5)	6.4-2
6.4.7	Assignment of Claims	
	Administrative Actions—Assignment and Release of Assignment	6.4-3
	Checklist: Reviewing and Approving Assignment-of-Claims Notices	6.4-6
	Sample 1: Notice of Assignment	6.4-8
	Sample 2: Language for Contract Modification	6.4-9

6.5 Contract Modifications

6.5.1 General

I. Practical Considerations for Contract Modifications	6.5-1
II. Documenting Contract Modifications	6.5-1
Checklist: Supporting Data for a Contract Modification	6.5-10
III. Modification Versus New Procurement	6.5-1
IV. Incorporating a Release of Claims in a Supplemental Agreement	6.5-2
Sample: Contract Modification to Effect Supplemental Agreement and Incorporate Release of Claims	6.5-11
V. Guidance on Exercising Options (6.5.1.f)	6.5-3
Sample: Contract Modification to Exercise an Option for Services	6.5-12

6.5.2 Change Orders

I. Funding a Change Order	6.5-4
Sample: Change Order Establishing a Ceiling Price	6.5-13
II. Constructive Changes	6.5-4

6.5.3 Equitable Adjustments for Delays

Calculating Equitable Adjustments	6.5-5
Illustration: Reaching an Equitable Adjustment	6.5-14
Checklist 1: Use of the Jury Verdict Approach	6.5-15
Checklist 2: Use of the Total Cost Approach	6.5-16
Checklist 3: Contractor's Entitlement to Added Indirect (Overhead) Costs on Equitable Adjustments	6.5-17
Checklist 4: Breakdown of Costs for Equitable Adjustments	6.5-18

6.5.4 Novation and Change-of-Name Agreements

I. Handling Novation Requests	6.5-7
Sample 1: Modification Recognizing a Contract Novation	6.5-19
Sample 2: Novation Agreement	6.5-20
II. Handling Change-of-Name Notification (6.5.4.d)	6.5-9
Sample 1: Modification Recognizing a Change of Name	6.5-24
Sample 2: Change-of-Name Agreement	6.5-25

6.6 Postal Service Property

Guidelines for Furnishing Postal Service Property	6.6-1
---	-------

6.7 Subcontracting Policies and Procedures

I. Disapproving Subcontracts	6.7-1
Checklist: Assessing Adequacy of the Advance Notice to Subcontract	6.7-2
II. Monitoring a Subcontractor's Performance	6.7-1

6.8	Claims and Disputes	
6.8.3	Decision and Appeal	
	I. Assembling and Forwarding an Appeal File	6.8-1
	II. Assembling an Appeal File When the Small Claims (Expedited) Procedure Applies	6.8-2
	III. Taking Post-Settlement Steps—For Settlements Prior to Board Decisions	6.8-2
6.9	Contract Termination	
6.9.1	General	
	Formats for Termination Notices (6.9.1.d)	6.9-1
	Sample 1: Telegraphic Notice—Complete Termination for Convenience	6.9-18
	Sample 2: Telegraphic Notice—Partial Termination for Convenience	6.9-19
	Sample 3: Letter Notice—Termination for Convenience When Telegraphic Notice Was Previously Issued	6.9-20
	Sample 4: Letter Notice—Termination for Convenience When Telegraphic Notice Was Not Previously Issued	6.9-24
	Sample 5: Telegraphic or Letter Notice—Complete Termination for Default	6.9-25
	Sample 6: Telegraphic or Letter Notice—Partial Termination for Default	6.9-26
6.9.2	Termination for Convenience	
	I. Settling Contracts Terminated for Convenience	6.9-1
	Sample 1: Settlement Agreement Format for Complete Termination of Fixed-Price Contracts	6.9-27
	Sample 2: Settlement Agreement Format for Partial Termination of Fixed-Price Contracts	6.9-30
	Sample 3: Settlement Agreement Format for Complete Termination of Cost-Reimbursement Contracts if Settlement Includes Costs	6.9-33
	Sample 4: Settlement Agreement Format for Complete Termination of Cost-Reimbursement Contracts if Settlement is Limited to Fee	6.9-37
	Sample 5: Settlement Agreement Format for Partial Termination of Cost-Reimbursement Contracts	6.9-39
	Sample 6: Format for No-Cost Settlement Agreements—Complete Termination ...	6.9-40
	Sample 7: Format for No-Cost Settlement Agreements—Partial Termination	6.9-41
	Sample 8: Settlement Agreement Format for Fixed-Price Contracts with Terminated Subcontracts	6.9-42
	Sample 9: Format for Agreements That Settle Reservations Contained in Previous Settlement Agreements	6.9-44
	II. Settlement Proposals for Fixed-Price Contracts	6.9-9
	Sample: Letter Amending a Notice of Termination for Default	6.9-45
	III. Settlement Proposals for Other Types of Contracts	6.9-13
	IV. The Termination Inventory	6.9-14
6.9.3	Termination for Default	
	I. Conditions Under Which the Postal Service Can Lose Its Right to Terminate	6.9-16
	II. Reinstating a Defaulted Contractor (6.9.3.a.4)	6.9-16

6.10 Remedies and Damages

6.10.1 Remedies

- I. Decisions on Remedies 6.10-1
- II. Guidelines for Repurchasing Against the Contractor's Account (6.10.1.b) 6.10-1
 - Checklist: Tests of Similarity Between Defaulted and Repurchased
Items and Services 6.10-4
 - Chart: Alternatives Available When Contractor Fails to Fulfill Contract Terms .. 6.10-5

6.10.2 Damages

- Assessment of Liquidated Damages 6.10-2
- Checklist: Should I Assess Liquidated Damages? 6.10-10

6.1 General**6.1.1 Responsibilities****Designating a Contracting Officer's Representative (COR) (6.1.1.b)****Qualifications**

You should make sure that any individual proposed as your representative has the qualifications and experience commensurate with the authority you are delegating. If he or she does not, you should request a qualified substitute, unless immediate training is available that could qualify the proposed individual for your designation.

Essential Elements of a Letter of Designation

The letter you write to designate someone as COR should—

- Address the individual by name and position title;
- Specify the contract number for which you are delegating authority (even though you may have the same COR for several contracts);
- Specify the authorities and tasks that you are delegating, as well as the limitations that you or higher authorities are imposing;
- Specify that the designee may not redelegate the authority you are delegating unless you specifically authorize such a redelegation (alternatively, you may retain total control by specifying that you alone will make all delegations);
- Specify the recordkeeping expected of the COR and the disposition the COR is to make of those records; and
- Require that the individual certify that he or she has read and will abide by the Postal Service's Code of Ethical Conduct. (Attach a copy. The Code is published as Part 447 of Title 39, Code of Federal Regulations, and Part 660 of the Employee Relations Manual.)

Sample 1 for this procedure, "COR Designation Letter," provides a model.

Essential Elements of a Notification Letter to the Contractor

The letter you write to advise the contractor of your designation of a COR should—

- Specify the name and position title of the COR;
- Cite the contract number for which you have delegated authority;
- Specify the extent of the delegation; and
- Emphasize the limitations of the authority you have delegated.

See Sample 2, "Notification Letter to the Contractor."

Termination of Designation

You should terminate COR designations in writing. When possible, the termination letter should be issued before the termination and should specify the date on which the termination

will become effective. You should send the contractor either a copy of the termination letter or a separate letter advising of the termination.

6.1.2	Contract Administration Functions
--------------	--

I. Preparation of Contract Management Plan: General Guidelines

Timing

For each contract, you, the contracting officer, should prepare a contract management plan. The plan should be completed at the time of contract award, but, starting with the initial stages of contract development, all members of the Postal Service contracting team should keep in mind the problems of contract administration, and should make key contract administration decisions even before a solicitation is issued. Remember, for example, that the Postal Service has no right to require the submission of data for monitoring purposes unless the contract specifies the data as a data submission.

Although the contract management plan is completed at contract award, it needs to be a flexible, working document. As the contract progresses, you may find it necessary to shift responsibilities or add tasks that could not have been anticipated at the time of award. Therefore, over the life of the contract, you will need to update your plan to reflect all developments.

Basis of Plan

For most contracts, the contract management plan will be based on a contract administration checklist (see PH 6.1.2-II below). However, some contracts will require more sophisticated techniques, as discussed in PH 6.1.2-III and 6.1.2-IV below.

Decisions on Monitoring

Deciding the level and type of monitoring needed is central to any contract administration plan, just as efficiency and effectiveness in contract monitoring are critical in the successful implementation of the plan. The single most important factor in your decision about the monitoring methods to use is contract type, although other factors you will bear in mind are the nature and complexity of the contract work, the importance of the expected results, and the attitudes and capabilities of the personnel involved. Cost-reimbursement contracts (see PM 5.1.4) require the most Postal Service monitoring because the Postal Service bears the burden of ensuring that efficient methods and effective cost controls are used.

In the more complex contracts, you will normally use different levels and types of monitoring for different elements of contract performance. On a cleaning service contract in a busy office building, for instance, you might wish to inspect the condition of the floors twice a week but rely on customer complaints in monitoring the emptying of wastebaskets.

See PM 6.3 and Handbook AS-706, Quality Assurance—Procurement and Supply, for in-depth discussions of contract monitoring.

II. Contract Administration Checklists

Purpose

A contract administration checklist—

1. Provides a baseline for project management and scheduling;
2. Is a simple way of tracking the extent of contract completion; and
3. Helps in postaward orientation (see PM and PH 6.2.1).

Structure and Content

The checklist outlines all major tasks that need to be performed by both Postal Service and contractor personnel, from contract award to contract closeout. You can make the process of drawing up your checklist more manageable, if you divide the checklist into four parts:

1. Contract performance preliminaries (delegation of responsibility, postaward conferences, and so forth);
2. Contract performance (monitoring, progress payments, and the like);
3. Inspection and acceptance; and
4. Postcontract activity (duties under warranty or patent provisions, transmittal of final technical data, audit, contract closeout activities, and so forth).

Within each section of the checklist, your task is to identify *what* must be done, *when* it must take place, *who* must do it, and, as necessary, *how* and *where* it is to be accomplished. The guideline for this procedure, "Common Elements of Contract Administration Checklists," enumerates some common answers to the question "what?". The sample for this procedure, "Format for Phase I—Contract Performance Preliminaries," provides a typical format for answering the other questions.

Cautions

1. Be sure to list only the major tasks. If you decide to hold a postaward orientation conference, for instance, you would want to list that as a major task but would not list the subtask of preparing an official record of the conference.
2. Since language derives its meaning largely from the context in which it appears, it is essential that in identifying the tasks to be performed, you read all parts of the contract not as isolated statements but as integral pieces of the whole unified document.
3. In your review of the contract, do not neglect to review the documents incorporated by reference. Among the documents more commonly incorporated into contracts by reference are detailed specifications and the contractor's own proposal.

III. Simple Project Management Charts

Production and other contracts often require the contractor to submit graphic displays that indicate the tasks to be accomplished and allow actual progress to be compared with scheduled progress. Even when the contract does not require that such a chart be submitted, you can prepare one anyway to help with contract monitoring.

Bar and Milestone Charts

One format that is easy to use and understand is the Gantt chart, commonly called a bar chart. Such a chart uses graphics to show the work to be done over a specified period of time. Bar charts are most appropriate for displaying a set of discrete but related activities, plotted against time. Sample 1, "Bar Chart for Startup of a Production Contract," is a chart showing nine activities needed to initiate work.

Milestone charts are similar to bar charts. They also identify major activities or tasks and show when each is phased into the project schedule. Like bar charts, they indicate the start and finish of each activity. Unlike bar charts, however, they use symbols to indicate major project milestone events (key briefings and deliverables, for example, or accomplishments that are critical to succeeding efforts). Sample 2, "Milestone Chart for a Training Contract," shows the key activities for a four-phase training contract effort.

Bar and milestone charts have the advantage of being easy to prepare and read, but they do have these limitations:

1. Neither shows complex interrelationships among events, activities, allotted time, and contractor progress.
2. Both are difficult to revise.

Other Graphic Displays

When a contract involves interdependent relationships among tasks, decisions, and resources, the contractor is often required to prepare a more elaborate graphic display (usually by computer). Such a chart will show what has to be done and will give performance timeframes, thereby helping the contractor discern the relationship among tasks, the necessary order of their occurrence, and the resources (materials, equipment, and labor) that will be needed at different times. The chart can become both a planning and a monitoring tool.

PERT and CPM, discussed in PH 6.1.2-IV and 6.1.2-V, respectively, are two techniques used to construct such charts.

IV. Program Evaluation Review Technique (PERT)

For complex projects in which events, activities, and time must be carefully monitored, the contract will often require the contractor to submit graphic displays called PERT and CPM charts. The project management techniques that underlie these charts are discussed below.

The Advantages of PERT

PERT is a way of constructing a network of all contract activities, showing how events and activities relate to one another over time. For contracts that involve installation of major systems (such as equipment or computer systems) or complex construction, or for unique projects, PERT offers several advantages:

1. It permits better control of prime and subcontract activities.
2. It helps in envisioning the work and seeing that resources are used efficiently.
3. It helps to keep down the costs and duration of a project.
4. It eliminates idle time.
5. It permits intelligent troubleshooting and corrective tradeoffs as the project progresses.

6. It lets routine decisions be made quickly, leaving more time for addressing complex problems.

Using data derived from PERT, those responsible for project management and monitoring can examine major events during the life of a project, envision all key activities related to the major events, and assess those events and activities in light of the time available for the project.

Events are specific accomplishments (either physical or mental) that do not consume time or resources. Examples of events are program go-ahead, design start, design completion, fabrication start, and fabrication completion. Activities are the actual tasks that consume project time; examples include writing software code, laying a foundation, or programming a computer. Activity time is the lapsed time required to complete a task in a specified manner.

PERT allows managers to examine the relationships among events, activities, and time and, in particular, to examine choices of action under optimistic, likely, and pessimistic conditions. Because of its sophistication, PERT permits adjustments under unanticipated or adverse conditions. Thus, by using PERT, tradeoffs can be made when problems first arise to keep a major project on schedule.

The PERT Time Network

A PERT network is actually a program plan or flowchart showing the significant events and the activities that must be completed over an allocated time period for a particular project. The events (often called milestones) and the activities (actual tasks) are diagrammed in a time relationship to each other as well as to the whole project. On a network diagram, events are shown by *boxes* or *circles*. Major events are connected by activity *arrows*. The tail of an arrow indicates the start of an activity, while the point indicates its completion.

There are several commercially available software programs that make setting up a PERT time network easier.

Necessary Planning Steps

One inherent advantage of PERT is that it necessitates an indepth planning effort. At least the following basic steps must be taken:

1. Identifying all the individual events and activities that will be needed to complete the project;
2. Sequencing the events and activities, and determining, given the timeframe available, which will be consecutive and which must be concurrent;
3. Making three kinds of time estimates for each activity—optimistic, most likely, and pessimistic; and
4. Identifying the "critical path," as discussed below.

The Critical Path

The critical path [the term originated with the Critical Path Method (CPM) planning technique, discussed briefly in PH 6.1.2-V below] is the sequence of activities and events whose completion is expected to take the greatest time. Identifying the critical path is a vital part of PERT planning. The critical path alerts managers to two things:

1. There is no slack time on the critical path. Any slippage in accomplishing events on the critical path will have to be made up during activities and events further down the path if the work is to finish on schedule.
2. The events on the critical path are the ones most crucial to the project's success. To improve the total effort, managers must focus on them.

Illustration

The sample for this procedure, "Simple PERT Network," shows a simplified PERT network for the same production contract start-up effort that is the subject of Sample 1 (the bar chart) for PH 6.1.2-III. The numbers within the circles signify the specific events, as listed in the event code. The numbers over the arrows show the amount of time (in this case, weeks) needed to go from one event to another. You can see, for example, that the critical path between events 2, 3, and 5 totals seven weeks of effort, whereas there is some slack time available on the noncritical, concurrent effort of moving from event 2 (contract signing) through event 4 (manufacturing schedules) to event 5 (bill of materials).

For More Information

This brief discussion has only touched on the terminology, application, and advantages of PERT. To develop even a basic working knowledge of the technique, you will need to—

1. Work with commercially available PERT software;
2. Take a course or two on PERT; or
3. Study the literature on PERT. [An 18-page bibliography can be found in *A Management Guide to PERT/CPM* by J. D. Weist and F. K. Levy (Englewood Cliffs, New Jersey: Prentice-Hall, 1977).]

V. Critical Path Method (CPM)

As discussed in PH 6.1.2-IV above, the critical path planning concept forms part of PERT networking. The CPM technique itself is very similar to PERT, but it differs in these key respects:

1. Whereas in PERT the emphasis is on events, in CPM it is on activities. Therefore, in a CPM network, the circles represent *activities* (rather than *events* as in a PERT network).
2. CPM considers both the time and the cost of each activity.
3. Managers use CPM to figure the cost of speeding up, or "crashing," certain phases of the work.

The sample for this procedure, "Simple CPM Network," shows a network accompanied by calculations of the normal and crash times for each activity, translated into normal and crash costs and estimated crashing costs per week.

As with PERT, acquiring a working knowledge of CPM requires study and practical application. See "For More Information" at the end of PH 6.1.2-IV.

VI. Contractor Advertising of Postal Service Work

The contracting officer must approve any mention of work performed for the Postal Service under a contract or ordering agreement which appears in a contractor's commercial advertising or publicity. "Mention" includes visual references, such as use of the Postal Service logo; photographs, drawings, or film footage of identifiable Postal Service facilities, equipment, or personnel; or facsimiles of stamps and postmarks.

Following are the steps to be taken:

1. The contractor must submit a facsimile of its proposed advertising or publicity copy and accompanying visual materials to the contracting officer at least 21 calendar days before its anticipated date of need. If the contracting officer agrees that reproduction of the visual materials would be unreasonably costly, the contractor may submit written descriptions of visual references instead. However, the contractor must permit the Postal Service to review the actual visual materials if it wishes.
2. The contracting officer must send the submission to the APMG for the Communications Department for evaluation and approval.
3. The APMG for the Communications Department will review the submission and return it to the contracting officer with written approval, approval with deletions or modification as noted, or rejection, within 14 or fewer calendar days.
4. The APMG for the Communications Department may give advance oral approval to the contracting officer when, in the contracting officer's judgment, the contractor was unable to make its submission far enough in advance to allow for a written response. Written confirmation must follow.
5. If the submission is approved or approved with deletions and modifications, the contracting officer will notify the contractor in writing, explaining the exact terms under which the mention of work for the Postal Service is permitted. The approval letter must include the following disclaimer:

This approval is not an endorsement or implied endorsement of [the contractor's] goods or services by the U.S. Postal Service.

Sample 1 for 6.1.1, Designating a Contracting Officer's Representative (COR)
COR Designation Letter

COR DESIGNATION LETTER

TO: Tom Jones, Project Engineer
FROM: Jane Justice, Contracting Officer
SUBJECT: Contracting Officer's Representative (COR)
Designation, Contract 104230-88-Q-0151

I am hereby designating you as contracting officer's representative (COR) on Contract 104230-88-Q-0151 awarded to the ABC Corporation, Our Town, WI, for the production of a new concept in mail handling equipment, Speedy Automated Parcel (SAP) System.

In this capacity you have the specific responsibilities detailed below, but perhaps the most important aspect of this authority is its limitations. *Under no circumstances are you authorized to make changes that would affect the cost or duration of the contract.* You will have the following responsibilities:

1. To furnish the contractor directly with technical assistance and guidance in all aspects of the contract. To expedite this high-priority project, you may formalize your guidance to the contractor in a written change order provided the order does not affect price or duration of the contract and provided the order contains both a signed acknowledgment from the contractor and the following statement:

In accepting this change order, the contractor agrees that the price and all other terms and conditions of the contract remain unchanged. Contracting personnel should note that COR change orders are appropriate only for construction and technical services.
2. To provide the contracting officer with a copy of all change orders issued under paragraph 1 above within 48 hours of issuance.
3. To provide me with written notification of any dispute that cannot be resolved between you and the contractor regarding performance of the contract.
4. To keep accurate records of all interim and final contract testing procedures outlined in Section 2B of the statement of work, and send a report within five working days of any tests to the project manager and the contracting officer.
5. To keep a daily log of all contract-related activities while you are on-site at the contractor's plant.
6. To verify invoices and, upon receipt, promptly certify them to the Postal Data Center for prompt payment, and send a copy of the certified invoice to me.

Sample 1 for 6.1.1, Designating a Contracting Officer's Representative (COR)
COR Designation Letter (continued)

7. To turn over all records pertaining to this contract to the successor COR if this COR designation is terminated for any reason before completion of the contract, and to notify me that you have taken such action.

Please note that you may not redelegate any of the contractual authority listed above, except for clerical tasks associated with that authority.

I am providing you with two copies of this letter of designation. Please sign one copy in the space provided below to indicate your acceptance, and return that copy to me. In addition, please sign the following certification to indicate that you have read and will abide by the Postal Service's Code of Ethical Conduct (copy attached).

ACCEPTED:

Contracting Officer's Representative

DATE:

I have read the Code of Ethical Conduct for Postal Service Employees and will abide by its requirements in conducting all my responsibilities as contracting officer's representative.

CERTIFIED:

Contracting Officer's Representative

DATE:

Attachment: Code of Ethical Conduct

Sample 2 for 6.1.1, Designating a Contracting Officer's Representative (COR)
Notification Letter to the Contractor

NOTIFICATION LETTER TO THE CONTRACTOR

TO: Alvin Johnston, Chief Project Officer
The ABC Corporation
123 Main Street
Our Town, WI XXXXX-XXXX

FROM: Jane Justice, Contracting Officer

SUBJECT: Contracting Officer's Representative (COR)
Designation, Contract 104230-88-Q-0151

This officially notifies you that Tom Jones, Project Engineer, U.S. Postal Service, will be my on-site representative for this contract.

Perhaps the most important aspect of his authority is its limitations. *Under no circumstances can he make changes that would affect cost or duration of the contract.* Please contact me directly at (XXX) 123-4567 when you anticipate changes that would affect price or overall time of performance.

Mr. Jones is authorized to act in my behalf in:

1. Furnishing technical assistance and guidance to you in all aspects of the contract and formalizing this guidance in a written change order, as long as the change does not affect price or duration of the contract.
2. Verifying and certifying all invoices. You should submit invoices directly to Mr. Jones.

I am providing you with two copies of this notice and request that you acknowledge one copy in the space provided below and return it. Thank you for your cooperation.

ACKNOWLEDGED:

Contractor

DATE:

Guideline for PH 6.1.2-II, Contract Administration Checklists
Common Elements of Contract Administration Checklists

COMMON ELEMENTS OF CONTRACT ADMINISTRATION CHECKLISTS

After you have reviewed your contract and identified major tasks for your checklist, run through this list of common contract administration functions to see if there are others you wish to include.

Applies	Does Not Apply	
_____	_____	Designate Contracting Officer's Representative (COR)
_____	_____	Notify the contractor of the COR
_____	_____	Hold a postaward orientation
_____	_____	Furnish Equal Employment Opportunity poster
_____	_____	Submit insurance and bond certifications
_____	_____	Provide Postal Service property
_____	_____	Monitor contractor material submittals
_____	_____	Verify subcontracting plan submission
_____	_____	Verify first article submission
_____	_____	Obtain OSHA standards certification
_____	_____	Give first article approval
_____	_____	Obtain quarterly reports of prime contractor subcontracts with small and minority-owned businesses
_____	_____	Monitor contractor-conducted testing procedures
_____	_____	Monitor Postal-conducted testing procedures
_____	_____	Review and approve contractor technical reports
_____	_____	Review and approve reports required for interim payment
_____	_____	Establish acceptance procedures and conduct acceptance
_____	_____	Obtain instruction/maintenance manuals on newly acquired equipment
_____	_____	Arrange for/participate in contract audit
_____	_____	Notify contractor of decision on exercising options
_____	_____	Obtain warranty

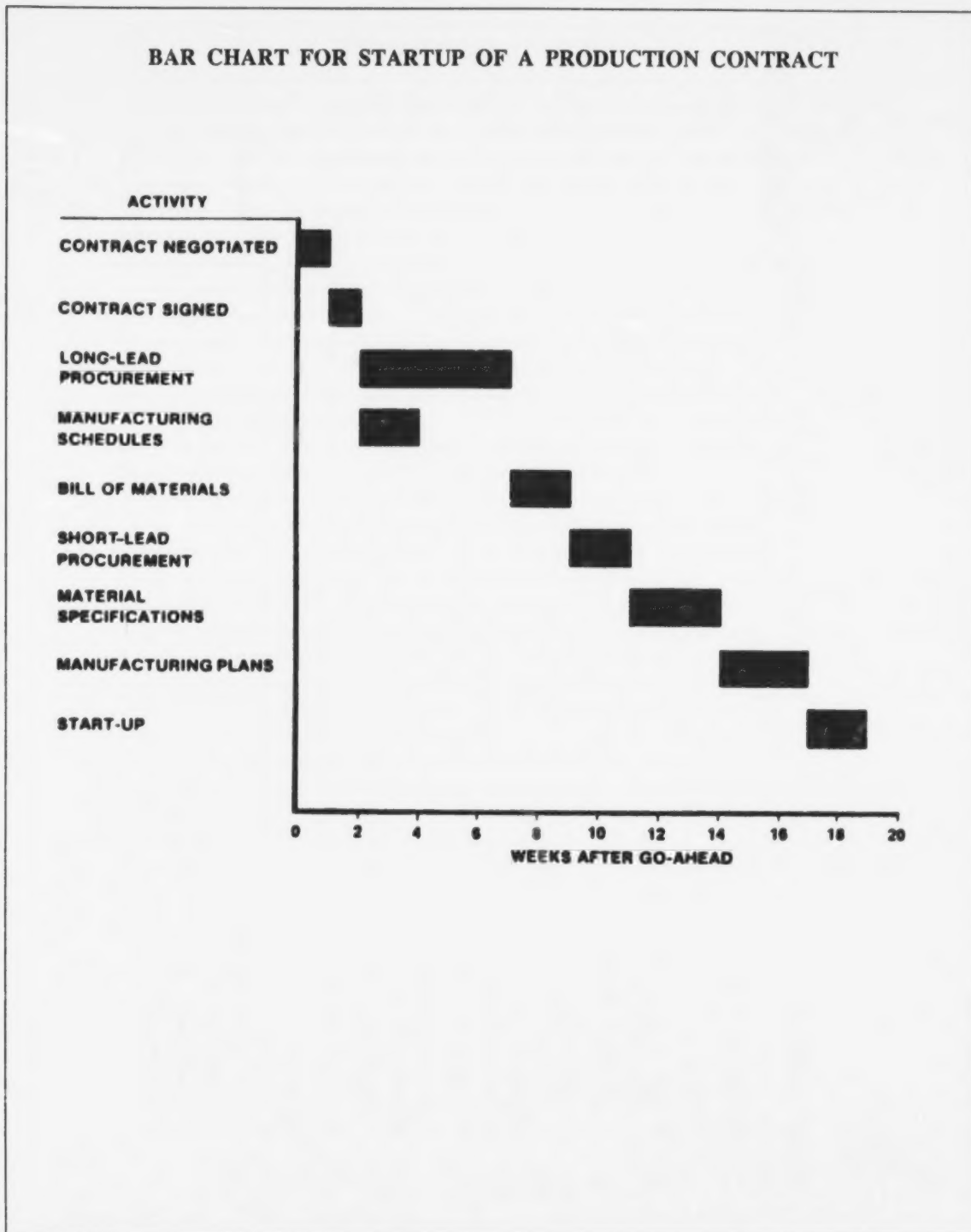
Sample for PH 6.1.2-II, Contract Administration Checklists
Format for Phase I — Contract Performance Preliminaries

FORMAT FOR PHASE I — CONTRACT PERFORMANCE PRELIMINARIES

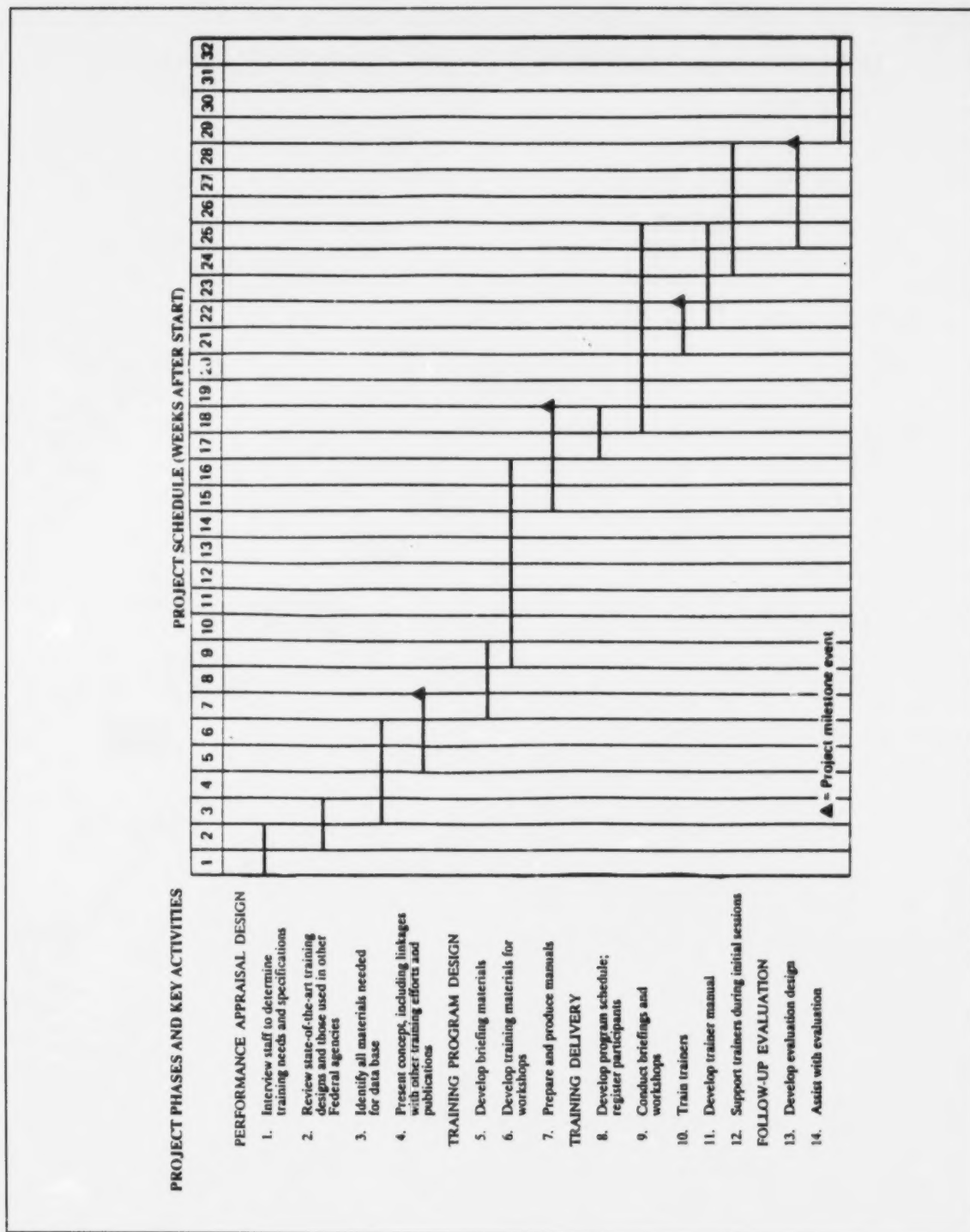
	Task	Milestone Date	Person Responsible	References
1.	Write COR delegation letters	Jan. 15, 1989	Ida Juan Contract Administrator	PM and PH 6.1.1.b
2.	Notify contractor of delegations	Jan. 15, 1989	Ida Juan Contract Administrator	PM and PH 6.1.1.b
3.	Submit quality control plan	Jan. 23, 1989	The ABC Company Contractor	SOW para. 2.1.4; Clause 2-3
4.	Review quality control plan	Jan. 31, 1989	Sherlock Holmes Inspector	SOW para. 2.1.5; Clause 2-3
5.	Hold postaward conference	Jan. 31, 1989	Jane Justice Contracting Officer	PM and PH 6.2.1
6.	Provide Postal-furnished tools	Feb. 6, 1989	Harry Altogether, Program Manager	SOW para. 3.1.2; Clause 2-11

NOTE: Additional columns could be added as necessary to specify where and how tasks are to be carried out.

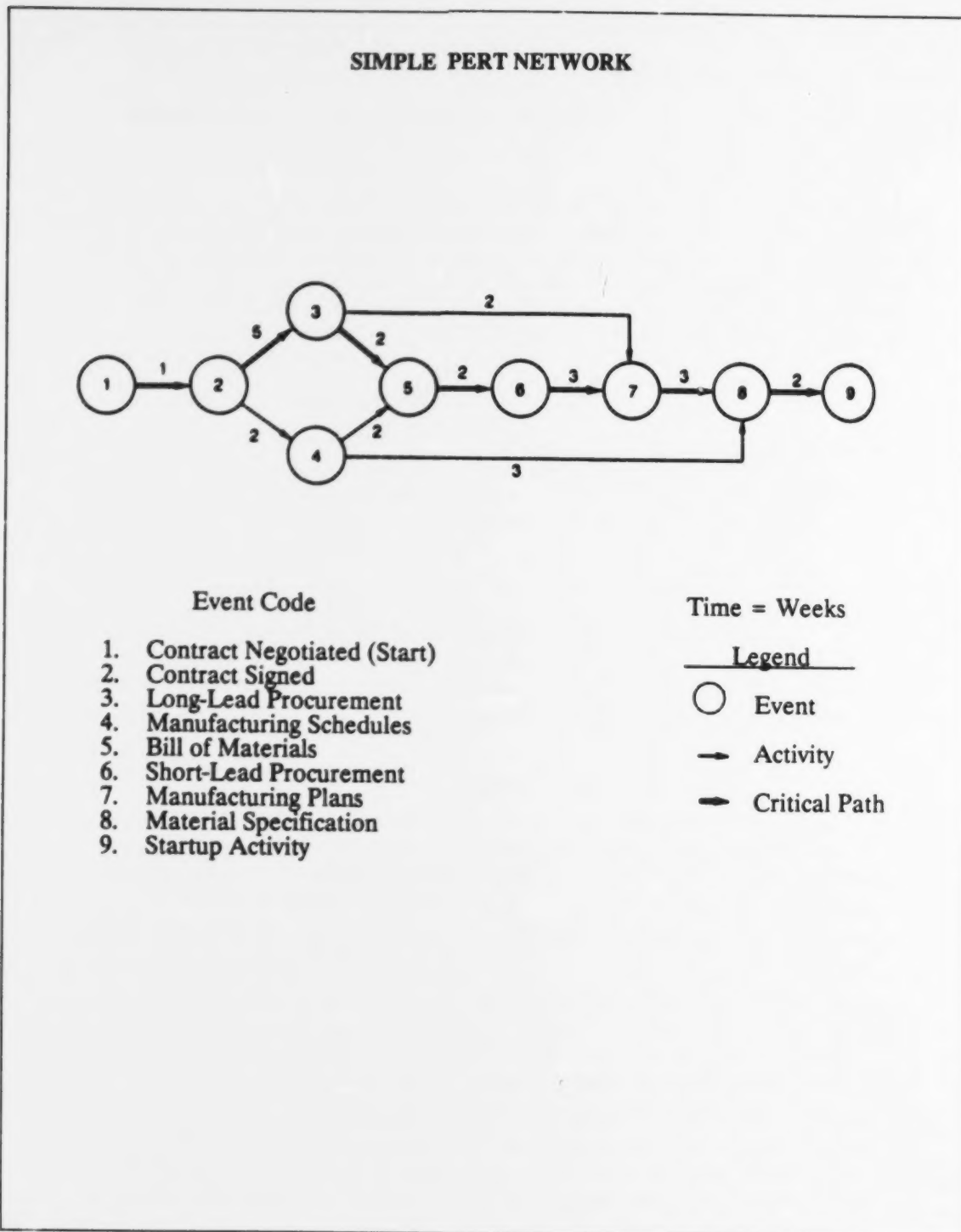
Sample 1 for PH 6.1.2-III, Simple Project Management Charts
Bar Chart for Startup of a Production Contract



Sample 2 for PH 6.1.2-III, Simple Project Management Charts
Milestone Chart for a Training Contract

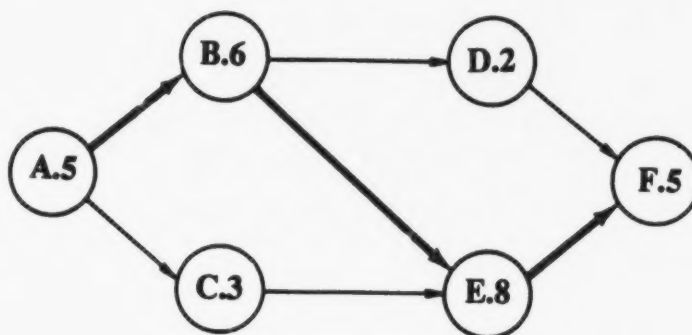


Sample for PH 6.1.2-IV, Program Evaluation Review Technique (PERT)
Simple PERT Network



Sample for PH 6.1.2-V, Critical Path Method (CPM)
Simple CPM Network

SIMPLE CPM NETWORK



Legend

A.4 = Activity

Time Required (4)

Activity
Identification (A)

Activity	Time Required in Weeks		Cost in \$		Crashing Cost per week in \$
	Normal	Crash	Normal	Crash	
A	5	3	10,000	14,000	2,000
B	6	5	30,000	42,500	12,500
C	3	2	8,000	9,500	1,500
D	2	1	12,000	18,000	6,000
E	8	6	40,000	52,000	6,000
F	5	2	20,000	29,000	3,000

6.2 Contract Performance**6.2.1 Postaward Orientation****Holding a Postaward Orientation Conference****Conference Focus**

The focus of an orientation conference should be the administrative paper-flow that was not completely detailed in the contract, along with performance aspects of the contract that are potential problems (for example, the authority of the Postal Service personnel who will have contact with the contractor, stringent safety requirements, and so forth). You may want to include a discussion of certain clauses that have caused problems in the past or are particularly important. You should not, however, attempt to go over every line in the contract but should concentrate on the key aspects.

The Need for an Orientation Conference

If the type of contract you will be administering has typically been trouble-free in the past (off-the-shelf commercial items are a prime example) and if the contractor has done work for the Postal Service before, you probably will not want to invest time in an orientation conference. The decision aid for this procedure, "Should I Hold a Postaward Orientation Conference?" will help you decide.

An Alternative to Orientation

If only a few aspects of the contract lead you to believe there may be a problem, you may wish to send the contractor a letter emphasizing these concerns. If you choose to do this, make sure that you invite feedback. The tone of the letter should be cooperative, not demanding. Sample 1, "An Alternative: The Postaward Orientation Letter," provides an example.

Steps for Effective Orientation Conference Management

1. When choosing a conference site, favor one that is convenient to most of the attendees. If the contract will involve on-site performance at a Postal Service installation and if the work site is conducive to holding a private conference, having the conference there would be highly desirable.
2. Hold the conference promptly after award, and in any case before the start of contract performance.
3. When there are potential problems, invite all key personnel for the contractor and the Postal Service. It will save headaches later if everyone invests a little time up front. If preaward and postaward contracting personnel are not the same, both should attend, but someone who has contract administration responsibility should officiate.
4. Prepare an agenda for discussion. If you want someone besides yourself to address a particular area (for example, having the Postal Service inspector outline the Postal Service's quality assurance plan), advise that person in advance—and brief him or her on the time frame needed to cover the subject adequately but not excessively.

5. Prepare an agenda to make sure that you do not overlook a key aspect of a particular subject. A sample checklist format is provided (Sample 2, "Checklist/Record for Postaward Orientation Conference"), but you should adapt your agenda to each conference. Leave space to note important remarks made during the orientation conference that should be included in the official conference record (see below). By using this kind of format, you may be able to keep your record of the conference very short—simply preparing a brief memorandum for the record (see Sample 3, "Memorandum for the Record") and attaching it to your checklist with notes.
6. Prepare an official record of the conference and distribute it to all who were in attendance and to any key person who was unable to attend. The person who chaired the conference should sign this record; if this was the contracting officer's representative, the contracting officer should also sign the conference record as "noted."

6.2.2 Record Keeping

I. Documenting Oral Communications

With all levels of Postal Service personnel who deal directly with contractor personnel, you must stress the need to document communications relating to a contract. Even conversations that at the time seem trivial may turn out to be significant if a dispute arises in the future. The memory of a witness many months after the fact will not carry as much weight as written documentation of an event made the day it happened.

You should periodically check communications record keeping that pertains to the contract, since education of personnel is a continual process.

Uniformity in record keeping will allow you to find the information you need more quickly. The sample for this procedure, "Oral Communications Record," shows you how to achieve uniformity and ensure that all pertinent facts are documented. It is a general-purpose format. You may wish to add blocks for pertinent information on specific contracts—for example, a building-number reference block on large elevator maintenance or cleaning services contracts or a task-order-number reference block when the contract specifies task orders.

II. Closing Out a Completed File

Physical Completion

A contract is physically complete when (a) all deliveries have been received and services have been performed and (b) the Postal Service has inspected, accepted, and made final payment on all contract deliverables and services.

Closeout

A contract is not closed until (a) it is physically complete *and* (b) all administrative actions have been concluded. Administrative actions needed to close out a contract usually entail—

1. Ensuring the proper disposition of Postal Service property;
2. Performing any required contract audits;

3. Resolving any cost issues (cost-reimbursement contracts);
4. Ensuring the submission of all notices, disclosures, and reports not shown as contract line items;
5. Settling all claims; and
6. Completing all contract file documentation.

Time Frames for Contract Closeout

Fixed-price contracts . . . 60 calendar days after final payment

Cost-reimbursement, . . . 60 calendar days after receipt of final voucher
time-and-materials, from the cognizant auditor. (Note: The audit
and labor-hour process can be long and complex. It can take as long
contracts as several years to close out a physically complete
contract.)

Required Closeout Checklist and Written Notices

Use the checklist for this procedure, "Contract Closeout Checklist—Fixed-Price and Cost-Type Contracts," as a guide to ensure that all administrative actions have been completed.

Notify the contractor in writing of actions it must take for contract closeout. For formats, see the letter notices shown as Samples 1 and 2 for this procedure. (Note: These letters are samples only; you may use other formats.) On all cost-type contracts, require a Contractor's Release or Contractor's Assignment of Refunds, Rebates and Credits, whichever is appropriate. (These formats are generated by the Computerized Procurement and Supply System (COMPASS).) On fixed-price contracts, you may require the Contractor's Release, but only when you consider it necessary to protect the interest of the Postal Service due to issues that could result in claims.

Special Considerations

1. If closeout documents include inventory schedules, you must make sure that all Postal Service property has been properly accounted for (see PM and PH 6.6). Your contract file must contain documentation of the final disposition of all Postal Service property.
2. When the contract contains warranty clauses, you may close out the contract but must notify the contractor that final payment does not constitute a waiver of its obligations to the Postal Service under the warranty clauses of the contract.
3. If the contract is a cost-type contract, you must ensure that all post-performance audit actions have been completed.

Transfer of Closed Files

1. Note the status of the contract as "closed out" in the award register of the COMPASS system, and input the actual completion date, final payment date, and final contract amount.
2. Staple the Contract Closeout Checklist (see the end of Section 6.2) to the outside of the file.

3. Transfer the file to storage. (See PH 6.2.2-III below.)

III. Storing and Retaining Contract Files

Format and Content of Files

1. Contracting personnel are to retain official contract files in the format prescribed by the Official Contract File Filing System format that is generated by DGS. You will use each page of the format as a cover page identifying the tabbed contents filed underneath. If the material filed within a tabbed section outgrows its space, set up an individual file folder (not multi-section). Identify the folder by contract and flap number, as identified in the filing system format. Within the master file, annotate the corresponding page (flap) with the comment that an individual folder has been established.
2. In the official multipart file folder—
 - Place only material that is pertinent;
 - Place only one copy of any document;
 - Ensure that all material is dated and identifies the preparer; and
 - Attach a sheet that indicates the distribution of official documents.

Security: Electronic Data Pertinent to a Contract

Follow the guidelines of Management Instruction AS 850-85-1, *Personal Computer (PC) and Office Automation (OA) Security*.

Security: Official Contract Files in Active Status

1. When the office is closed, store official files in a locked drawer.
2. When a file is removed from the immediate vicinity of its usual filing place, use a sign-out card. The card must show the number of the file, the name of the person removing it, the office or address of the person who will have the data, and the dates on which the file was removed and returned. If only a portion of the file is removed, the card must list the specific items removed.

Maintenance and Disposition of Closed-Out Official Contract Files

When a contract is officially closed out (see PH 6.2.2-II), ensure that all files are properly boxed and transferred to storage within 30 calendar days of receipt. Keep a log of the files transferred to storage, with the following information at a minimum:

1. The contract number of the closed-out file,
2. The date of closeout,
3. The date of transmission to storage, and
4. The location of the file in storage.

Official contract files must be maintained for six years from the date of closeout. After the six-year period has elapsed, the contracting officer must approve the destruction of contract records by reviewing a list of the files to be destroyed and indicating concurrence.

Maintenance and Disposition of Unsuccessful Offers

After award, retain only one copy of each unsuccessful offer. Destroy extra copies, unless an offeror has requested their return.

You may destroy the one remaining copy of each unsuccessful offer or quotation after final payment of the contract to which it pertains or after one year from the date of award of that contract, whichever occurs later; however, if an offer has a connection to any unresolved issues, do not dispose of it. Unresolved issues include any interest shown by an outside party (via protest, litigation, audit, Freedom of Information Act request, Congressional inquiry, and the like).

6.2.3 Contract Monitoring

I. Contractor Reporting

Types of Reports

1. *End item reports.* These reports are contract deliverables and thus an integral part of the work to be accomplished. Examples are reports of the findings of feasibility studies, reports recommending changes in procedure as a result of a management consultant's evaluation, and so forth.
2. *Business reports.* These reports indicate the compliance, status, or progress of the contract work. They are generally incidental to the contract work, rather than an end item deliverable. Examples are safety reports, receiving reports, and reports on royalty information.

End item reports should be shown as separate contract line items in the contract schedule. Business reports can be shown as contract line items but generally are not.

You should take care to identify both types of reports on your contract administration checklist or other management plan (see PH 6.1.2.I) and ensure that a Postal employee is given the responsibility of monitoring every report.

Remedial Action for Late Reports

1. *Written reminder.* It is essential that you issue a reminder to the contractor as soon as the report becomes late, citing the contract requirement.
2. *Withholding of payment.* If the report is shown as a separate contract line item and the contractor submitted a separate price for it (rather than noting "Not Separately Priced" or a similar notation), you may withhold payment of the amount. On the other hand, you may not withhold part or all of a lump sum payment simply for the lack of a business report related to items or services for which payment is otherwise due, unless you have a good basis for doing so. For example, Clause B-6, *Receiving Reports*, specifically gives you a basis for withholding payment for the entire amount of any shipment that is not accompanied by a receiving report.
3. *Retainage.* If the contract calls for a specific retainage to be held at the contracting officer's discretion, continue the retainage until the contractor submits the delinquent reports.

The Postal Service's Responsibility—Timely Review

The contract should give a specific time frame for Postal Service review of each contractor report. If it does not, you should assign one as part of your contract management plan (see PH 6.1.2-I).

Timely review is essential. If a contractor does not get feedback until the last week of contract performance on a report submitted much earlier it will probably assume (1) that the report wasn't really needed as soon as the contract stated or wasn't really needed at all, resulting in a lack of diligence in submitting future reports or (2) that the Postal Service is lax and disorganized in its contract administration. Either assumption can lead to trouble; however, the most serious possibility is that the contractor will later submit a claim for the Postal Service delay.

PH 6.2.3-II provides sample formats for tracking submittals of materials and data. These monitoring aids are designed primarily for tracking interim data reports and samples because they can easily be overlooked in the midst of other contract activity. However, end item reports must be tracked just as carefully. Be sure that you—

1. Establish a Postal review time frame when one is not specified in the contract, and
2. Come to an understanding with reviewers that the objective is to have a one-time Postal review, providing sufficient explanation of a conditional approval or a disapproval to enable the contractor to submit an acceptable report on the second submission.

Remember that excessive Postal delay in reviewing an end item report could be considered a breach of contract and lead to a contractor claim for monetary damages.

II. Guidelines for Review of Contractor Submittals (6.2.3.c)

Monitoring Submittals

When a contract calls for the Postal Service to review a contractor's submittals, it is important that you track not only the contractor's timely submission but also the Postal Service's timely review. Sample 1, "Submittal Tracking Sheet," provides a format.

Delay in approving an acceptable submittal is normally considered an excusable delay and may therefore lead to an equitable adjustment that extends contract performance time. Consequently, a good contract specification will cite a maximum time for Postal Service review, and a good contract administration team will strive to complete its review within that time.

If a contract does not cite a review time frame and the reviewing authority is outside the procurement office, cite a specific reasonable due date in the request for review. Sample 2, "Transmission Sheet for Contractor Submittal," provides a format that you can use.

After Postal Service review, you will notify the contractor of the reviewing officer's recommendation. For a format to use, see Sample 3, "Notification to Contractor." Note, however, that if the contracting officer decides to override the reviewing authority's recommendation, Sample 3 must be modified.

If the submittal is to go directly to the reviewing authority from the contractor, discuss the review time with the reviewing authority and document a time frame that you both consider acceptable.

Substitutions

Substitutions can be authorized only by the contracting officer and only when clearly justifiable. The checklist for this procedure, "Approving Substitutions on Submittals," provides guidance.

6.2.5 Right to Adequate Assurance of Performance

Notices to the Contractor

In your efforts to seek adequate assurance of performance for the Postal Service, you can issue the following four types of notices. You should send all of them by a method that will provide you with written proof of delivery to the contractor.

1. Notice to Re-establish a Delivery Date

A notice to re-establish a delivery date unilaterally is appropriate *only* when (1) a period of time (several weeks or more) has elapsed since the delivery date, during which time the Postal Service procurement office has taken no official action *and* (2) the contractor will not agree to a contract modification to change the delivery date.

Note that a unilaterally imposed delivery date must be reasonable, considering the stage of performance and work left to be done.

In a memorandum to the file, you should document why the unilateral action is in the interest of the Postal Service.

You may use a notice substantially the same as the one shown in Sample 1, "Notice to Re-establish a Delivery Date," but you should also seek legal counsel on the wording of the notice because individual circumstances may make it prudent to add other language.

2. Notice of Forbearance

A notice of forbearance is appropriate when the Postal Service is delaying action on an otherwise enforceable date for a brief time (normally 30 days or less). The Postal Service does not give up its right to the already established delivery date but merely delays exercising that right. If you unreasonably delay action on an otherwise enforceable date and do not issue such a notice, the Postal Service Board of Contract Appeals or Claims Court may rule that you have "waived" the Postal Service's right to the original due date under Clause B-13, *Termination for Default* (see PM and PH 6.9.3 and PM and PH 6.2.6).

In a memorandum to the file, you should document why a notice of forbearance is in the interest of the Postal Service.

You may use a notice substantially the same as the one in Sample 2, "Notice of Forbearance." Consult legal counsel to be sure that individual circumstances are taken into account.

3. Demand for Adequate Assurance Notice

You should use a notice demanding adequate assurance (sometimes called a "cure notice") *only* when adequate time remains before the contract due date for the contractor to cure the particular condition that the Postal Service sees as endangering contract

performance. If the due date is within ten days, you should issue a notice of impending termination (see below) instead.

You may use a notice substantially the same as the one in Sample 3, "Demand for Adequate Assurance Notice." Consult legal counsel to be sure that individual circumstances are taken into account. Refer to PM 6.9.3.b.6.

4. *Notice of Impending Termination*

Before you can rightfully issue a notice of impending termination, *all* of the following conditions must be present:

- Termination for default appears to be in the interest of the Postal Service (see PM and PH 6.9.3).
- You are able to issue the notice of impending termination immediately upon expiration of the delivery period.
- If the contractor does not provide adequate assurance of delivery or performance as a result of the notice you are issuing, you will pursue default action. In other words, the contractor's response to the notice is clearly its "last chance" to provide you with adequate assurance of performance before you issue a termination notice.

If any one of the above conditions is *not* present, *do not send the notice of impending termination*. Seek other remedies.

If a notice of impending termination is appropriate, you may use a notice substantially the same as the one in Sample 4, "Notice of Impending Termination." Consult legal counsel to be sure that individual circumstances are taken into account. Refer to PM 6.9.3.b.5.

6.2.6 Anticipatory Repudiation

Guidelines on Anticipatory Repudiation

Prerequisites for Citing Anticipatory Repudiation as Authority to Default

As your authority for issuing a termination notice, it is generally preferable to cite Clause B-13, *Termination for Default*, rather than the commercial law concept of anticipatory repudiation, because contractors are more familiar with Clause B-13. But sometimes (most often when the Postal Service has waived the due date by neglecting necessary actions), anticipatory repudiation may be your only clear authority. You cannot correctly cite anticipatory repudiation as your authority to default unless all the following circumstances are present:

1. Completion of performance either is not yet due or has been waived by the Postal Service.
2. The contractor has definitely and unequivocally indicated that it will not render the promised performance when the time fixed for it in the contract arrives. (Note: If you "re-established" a new due date, you may consider only words or actions after the new due date is established.)

3. Either the professed inability to perform clearly cannot be overcome or the contractor refuses to express—orally, in writing, or through action—an intent to continue performance. (See PH 6.2.5 for samples of notices to use in obtaining an expression of intent from the contractor.)

Forms of Anticipatory Repudiation

1. *Express refusal to perform.* Examples are abandonment and refusal to accept orders under an indefinite delivery contract.
2. *Express statement of inability to perform.* Examples are (a) acts of abandonment or nonperformance (as opposed to total abandonment) coupled with claims for payments or relief from matters that were within the risk the contractor had assumed under the contract terms, and (b) requests from the contractor for a termination for convenience, stating reasons that were within the risk the contractor had assumed under the contract terms.
3. *Actions indicating inability to perform.* Two examples are when the contractor's plant is being padlocked because of an IRS lien, and when the contractor sells equipment essential to the performance of the contract. Note that bankruptcy in itself is not an action indicating inability to perform; either the contractor or the bankruptcy trustee would have to give an additional indication that the contractor was unable to perform.

Retraction of Repudiation

A contractor can retract a repudiation only if it does so before the Postal Service materially changes its position or makes it known that it considers the repudiation to be final (PM 6.2.6.b). Therefore, if you have already issued a termination notice, you need not consider a contractor's retraction of repudiation.

Decision Aid for PH 6.2.1, Holding a Postaward Orientation Conference
Should I Hold a Postaward Orientation Conference?

SHOULD I HOLD A POSTAWARD ORIENTATION CONFERENCE?

Some common considerations in deciding whether to hold postaward orientation conferences are listed below. This checklist will help you crystallize your thoughts. The "Yes" answers favor a conference.

Yes	No	
_____	_____	Is this the contractor's first Postal Service contract?
_____	_____	Has the contractor had little previous experience with this type of product or service?
_____	_____	If the contractor had previous Postal Service contracts, were an unusual number of problems associated with them?
_____	_____	Can you foresee specific potential problems on this contract?
_____	_____	Is any aspect of this contract urgent or critical to the Postal Service?
_____	_____	Does the contract type require a relatively high degree of administration?
_____	_____	Is the requirement relatively complex and of a relatively high dollar value?
_____	_____	Have you had little previous conversation with the contractor on the aspects of this particular contract? (In contrast, you may have had detailed conversations during an on-site preaward survey, during negotiation sessions, and so forth.)
_____	_____	Is there any indication that misunderstandings exist?
_____	_____	Does the procurement history of the required supplies or services reveal recurring problem areas?
_____	_____	Is a lengthy production cycle planned?
_____	_____	Does the contract involve spare parts and related equipment?
_____	_____	Is the contractor a small or minority business concern?
_____	_____	Is extensive subcontracting involved?
_____	_____	Are safety factors involved in the contract work?
_____	_____	Are progress payments or other interim financing arrangements involved?
_____	_____	Can you anticipate contract changes that would require the contractor to use specialized accounting procedures?

Sample 1 for PH 6.2.1, Holding a Postaward Orientation Conference
An Alternative: The Postaward Orientation Letter

AN ALTERNATIVE: THE POSTAWARD ORIENTATION LETTER

TO:

FROM: Al Jones, Contracting Officer

Regarding Contract No. 104230-88-C-XXXX

I am writing to point out a requirement under this contract that has led to problems in other Postal Service contracts, so that we can avoid difficulties. Also, I would like to specify the contract completion date and indicate the Postal Service personnel who will play a role in the contract.

To install the four pieces of equipment required in contract line item #4, you will need to have a power outage in the west wing of Building #XYZ, which is a heavily populated office building. Please note that paragraph 2.a(1) of the statement of work requires that this power outage take place on Sunday, on a Federal holiday, or between the hours of midnight and 6:00 a.m. In addition, paragraph 2.a(5) of the statement of work requires that you provide the Postal Service with a full seven calendar days' notice of your need for this outage (send the original notice to Mr. Smith—see below). I can provide you with no relief in this requirement because we have computers on-line 24 hours a day in that wing of the building, and other operations that cannot be impeded.

Since performance time is expressed in the contract in calendar days after contract award, I would like to express it now as a definite date: March 27, 1989.

Mr. Howard Smith is my representative in the technical aspects of this contract. Accordingly, he is referred to as the contracting officer's representative (COR). He is not authorized to make any changes to the contract as written. He does have the authority to inspect and accept the equipment for the Postal Service.

You will receive any changes to the contract as an official modification to the contract signed by me or another Postal Service contracting officer.

The list below summarizes your paperwork submissions and designates the Postal Service persons to whom you should send them:

Final quality control plan
 (you provided a draft plan
 at the preaward survey)

Ms. Jane Doe
 Quality Assurance Specialist
 U.S. Postal Service
 123 Main Street
 Our Town, PA XXXXX-XXXX

Sample 1 for PH 6.2.1, Holding a Postaward Orientation Conference
An Alternative: The Postaward Orientation Letter (continued)

Request notice for the power outage, request for interim inspection required by paragraph 10.a(7) of the statement of work, and technical reports required by contract line item #7

All other submissions and correspondence (including nontechnical questions) should be directed to me

Mr. Howard Smith
Dept. XYZ - Room 117
U.S. Postal Service
123 Main Street
Out Town, PA XXXXX-XXXX

Mr. Al Jones
Contracting Officer
Dept. ABC - Room 401
140 Main Street
Our Town, PA XXXXX-XXXX

Don't hesitate to call me if you want to discuss any aspect of this contract. My office number is XXX-123-1234, and I'm usually here between the hours of 7:30 a.m. and 4:00 p.m.

Sample 2 for PH 6.2.1, Holding a Postaward Orientation Conference
Checklist/Record for Postaward Orientation Conference

CHECKLIST/RECORD FOR POSTAWARD ORIENTATION CONFERENCE			
PART I - GENERAL			
1. Contract No.	2. Total Amount	3. Type of Contract	4. Date of Conference
5. Preaward Survey?	6. Contractor Name		7. Contractor Address
Yes ☐	No ☐		
PART II - CONFEREES			
1. Postal Service		2. Contractor	
PART III - CONFERENCE PROGRAM			
Subject	Check if Applicable	Clause No. if Applicable	Significant conclusions; further action to be taken (attach additional sheets if necessary)
A. GENERAL			
1. Function and authority of Postal Service personnel			
2. Routing of correspondence			
3. Omissions of conflicting provisions			
4. Other (specify)			
B. REPORTS: PREPARATION AND SUBMITTAL			
1. Work progress			
2. Financial			
3. Other (specify)			
C. SUBCONTRACTS			
1. Consent to placement			
2. Prime's responsibility for administration			
3. Cost or pricing data			
4. Source inspection			
5. Other (specify)			
D. SMALL BUSINESS SUBCONTRACTING			
1. Contractual requirements			
2. Program to facilitate			
E. CONTRACT MODIFICATIONS			
F. POSTAL SERVICE PROPERTY			
1. Use of facilities and tooling			

Sample 2 for PH 6.2.1, Holding a Postaward Orientation Conference
Checklist/Record for Postaward Orientation Conference (continued)

Subject	Check if Applicable	Clause No. if Applicable	Significant conclusions; further action to be taken (attach additional sheets if necessary)
2. Maintenance and preservation			
3. Property procedure approval			
4. Property disposal procedures			
5. Other (specify)			
G. SPECIAL PROVISIONS			
1. Repricing			
2. Liquidated damages			
3. Postal Service financing			
4. Special tooling			
5. Overtime			
6. Bill of Materials			
7. Data rights			
8. Warranties			
9. Work performed at Postal Service installations			
10. Other (specify)			
H. GENERAL PROVISIONS			
1. Limitation of cost			
2. Allowability of cost			
3. Other (specify)			
I. DELIVERY SCHEDULES			
J. TRANSPORTATION			
K. INVOICING AND BILLING INSTRUCTIONS			
L. PROCESSING OF COST AND PRICE PROPOSALS			
M. LABOR			
1. Actual and potential labor disputes			
2. Davis-Bacon Act			
3. Work Hours Act			
4. Walsh-Healey Act			
5. Copeland Anti-Kickback Act			
6. Equal Opportunity Program			

Sample 2 for PH 6.2.1, Holding a Postaward Orientation Conference
Checklist/Record for Postaward Orientation Conference (continued)

SECTION 2. QUALITY ASSURANCE AND ENGINEERING			
Subject	Check if Applicable	Clause No. if Applicable	Significant conclusions; further action to be taken (attach additional sheets if necessary)
A. QUALITY ASSURANCE SYSTEM			
B. WAIVERS AND DEVIATIONS			
C. DRAWING/DESIGN APPROVAL			
D. MANUALS			
E. PREPRODUCTION SAMPLE			
F. QUALIFICATIONS AND ENVIRONMENTAL TESTS			
G. INSPECTION AND ACCEPTANCE			
H. SPECIFICATION INTERPRETATION			
I. LABORATORY FACILITIES			
J. VALUE ENGINEERING CLAUSE			
K. OTHER (specify)			
SECTION 3. PRODUCTION			
A. PRODUCTION PLANNING			
B. MILESTONES AND OTHER MONITORING DEVICES			
C. PRODUCTION SURVEILLANCE			
D. SAFETY			
(Additional Notes)			

Sample 3 for PH 6.2.1, Holding a Postaward Orientation Conference
Memorandum for the Record

MEMORANDUM FOR THE RECORD

November 5, 1988

I chaired a postaward orientation conference on Contract No. 12345-88-C-XXXX for repairs to a conveyor system in the Federal Building on Main Street in Our Town, PA. A detailed list of the points we covered and the names of those in attendance is attached to this record.

The most pressing problem that surfaced was that none of the Postal Service attendees knew the location of the Government-furnished replacement parts that the Postal Service is to provide per paragraph 1.2.3a of the statement of work. The building superintendent, Mr. Howard Ames, one of the attendees, went back to check his records after the conference and advised me on November 4 that the parts in question had been ordered through a Federal Supply Schedule and had not yet been received. Our small-purchases supervisor, Ms. Janet Doe, found the order (Order #12345-87-X-XXXX) and advised me today that it was shipped on October 29, so Mr. Ames should be receiving it any day. This is not holding up performance, since the parts will not be needed until the second week in December.

Sam Smart
Contracting Officer's Representative

Noted: Jane Justice
Contracting Officer

Sample for PH 6.2.2-I, Documenting Oral Communications
Oral Communications Record

ORAL COMMUNICATIONS RECORD

Contract No. _____

Date of communication: _____

Kind of communication (phone, face-to-face): _____

Location, if face-to-face: _____

Persons involved in the conversation:

IMPACT (Cite any specific impact on contract—for example, "delay," "potential stop work," etc.):

SUMMARY (use additional sheets as necessary):

Sample for PH 6.2.2-I, Documenting Oral Communications
Oral Communications Record (continued)

FOLLOW-UP ACTION NEEDED:

Name and title of person preparing this memorandum:

Date memorandum was prepared: _____

Checklist for PH 6.2.2-II, Closing Out a Completed File
Contract Closeout Checklist—Fixed-Price and Cost-Type Contracts

**CONTRACT CLOSEOUT CHECKLIST—FIXED-PRICE AND COST-TYPE
CONTRACTS**

Contract No. _____

Contractor: _____

Requiring Organization/
Project Manager: _____

Contracting Officer: _____

Contract Administrator: _____

Completed: _____

Closeout Action (Note "N/A" if any item is not applicable)

Initiated Due Completed

- | | | | |
|-------|-------|-------|--|
| _____ | _____ | _____ | 1. Requiring organization's memorandum of contract completion |
| _____ | _____ | _____ | 2. Letter to contractor initiating closeout |
| _____ | _____ | _____ | 3. Receipt of all reports required by clauses relating to patents, inventions, royalties, copyrights, and publications |
| _____ | _____ | _____ | 4. Submission of inventory schedules (fixed-price and cost-type) |
| _____ | _____ | _____ | 5. Property disposition (fixed-price and cost-type) |
| _____ | _____ | _____ | 6. Notice of warranty obligations (fixed-price and cost-type) |
| _____ | _____ | _____ | 7. Settlement of any outstanding contractor obligations (fixed-price and cost-type) |
| _____ | _____ | _____ | 8. Settlement of all suspended or disapproved costs (cost-type) |
| _____ | _____ | _____ | 9. Definition of overhead rates (cost-type) |
| _____ | _____ | _____ | 10. Receipt of final audit report (cost-type) |
| _____ | _____ | _____ | 11. Receipt of contractor's release (fixed-price and cost-type) |
| _____ | _____ | _____ | 12. Receipt of contractor's assignment (cost-type) |
| _____ | _____ | _____ | 13. Receipt of final invoice or voucher (fixed-price and cost-type) |

Checklist for PH 6.2.2-II, Closing Out a Completed File

Contract Closeout Checklist—Fixed-Price and Cost-Type Contracts (continued)

- | | | | |
|-------|-------|-------|---|
| _____ | _____ | _____ | 14. Transmittal of approved final invoice or voucher to Postal Data Center (PDC) |
| _____ | _____ | _____ | 15. PDC notification of final payment (pertinent page from "Accounting Period Contract Reports from Number Status File" in contract file) |
| _____ | _____ | _____ | 16. De-obligation of excess funds |
| _____ | _____ | _____ | 17. Evaluation of contractor performance |
| _____ | _____ | _____ | 18. Completion of COMPASS system status change (Award Register) |
| _____ | _____ | _____ | 19. Transmission of file to storage |

Sample 1 for PH 6.2.2-II, Closing Out a Completed File
Notification of Closeout Actions—Fixed-Price Contracts

NOTIFICATION OF CLOSEOUT ACTIONS—FIXED-PRICE CONTRACTS

(Name of Contractor)
(Address)

Dear _____:

Reference: U.S. Postal Service Contract No. _____ for _____

The items listed below are required by the terms of the contract. To expedite final payment and contract closeout, please forward these items to my attention by _____.

[List items a through d, as applicable.]

- a. Any outstanding reports or data items (reference contract paragraph citation).
- b. Inventory schedules for all Postal Service-furnished property, special tooling, residual material, and so forth, which was not consumed during the performance of work required by the contract.
- c. Contractor's Release, enclosed.
- d. Other (as applicable).

Upon acceptance of these items by the Postal Service, final payment will be made.

[The following paragraph is to be used only if applicable.]

Under the terms of the contract, a warranty [describe] is still in effect. Final payment and contract closeout do not relieve you of your obligations to the Postal Service under the warranty clause.

(Name)

Contracting Officer

Enclosure

Sample 2 for PH 6.2.2-II, Closing Out a Completed File
Notification of Closeout Actions—Cost-Type Contracts

NOTIFICATION OF CLOSEOUT ACTIONS—COST-TYPE CONTRACTS

(Name of Contractor)
(Address)

Dear _____:

Reference: U.S. Postal Service Contract No. _____ for _____

The items listed below are required by the terms of the contract. To expedite final payment and contract closeout, please forward these items to my attention by _____.

[List items a-f as applicable. You may also want to request that some items be sent to the auditor instead of to you.]

- a. Any outstanding reports or data items (cite appropriate contract paragraph).
- b. Inventory schedules for all Postal Service-furnished property, special tooling, residual material, and so forth, which was not consumed during the performance of work required by the contract.
- c. Preparation of final voucher.
- d. Contractor's Release, enclosed.
- e. Contractor's Assignment of Refunds, Rebates, and Credits, enclosed.
- f. Other (as applicable).

[The following paragraph is to be used only if applicable.]

Under the terms of the contract, a warranty *[describe]* is still in effect. Final payment and contract closeout do not relieve you of your obligations to the Postal Service under the warranty clause.

(Name)

Contracting Officer

Enclosure

Sample 1 for 6.2.3-II, Guidelines for Review of Contractor Submittals
Submittal Tracking Sheet

[illegible]

Sample 2 for PH 6.2.3-II, Guidelines for Reviewing Contractor Submittals
Transmission Sheet for Contractor Submittal

TRANSMISSION SHEET FOR CONTRACTOR SUBMITTAL

TO: _____ (specify reviewing authority)
FROM: Contracting Officer
Reference: Contract No. _____
Submittal ID No. _____ (see Sample 1,
Material Submittal Tracking Sheet)

Please review the attached material submitted by the contractor per paragraph _____ of the specification [or paragraph _____ of the contract]. Return this form to me with your recommendation.

Your completed review should reach this office by _____. [Cite a date that would be the maximum time frame allowed by the contract for Postal Service review. If none is specifically required, cite a date that would allow for a reasonable time frame.]

TO: Contracting Officer
FROM: _____ (reviewing authority)

I recommend the following action (check one of the three blocks below) in regard to the contractor submittal referenced above:

_____ Approve

_____ Approve, subject to the following conditions (use additional sheets as necessary):

_____ Disapprove. Submittal is deficient, as detailed below (use additional sheets as necessary):

Sample 3 for PH 6.2.3-II, Guidelines for Reviewing Contractor Submittals
Notification to Contractor

NOTIFICATION TO CONTRACTOR

TO: Contractor

FROM: Contracting Officer

Reference: Contract No. _____

Submittal ID No. _____

Description of Material Submitted _____

I concur in the recommendations of the reviewing official as indicated on the attached Transmission Sheet for Contractor Submittal. *[NOTE: Delete the preceding sentence and any interoffice Postal Service correspondence if you do not concur in the recommendations.]*

Your submittal, referenced above, is:

_____ Approved.

_____ Approved, subject to the conditions described on the attached Transmission Sheet for Contractor Submittal.

_____ Disapproved, for reasons described on the attached Transmission Sheet for Contractor Submittal. Please resubmit by _____ (cite a specific date).

_____ Disapproved, because _____

 (signed)

 (dated)

Checklist for PH 6.2.3-II, Guidelines for Review of Contractor Submittals
Approving Substitutions on Submittals

APPROVING SUBSTITUTIONS ON SUBMITTALS

You should consider a substitution on a contract submittal only when at least one "YES" is checked under 1 below. You should be able to check 2 "YES" before your approval of the substitution.

- | | <u>Yes</u> | <u>No</u> | |
|----|------------|-----------|---|
| 1. | _____ | _____ | Item for which substitution is being proposed is not obtainable from normal sources. |
| | _____ | _____ | Method specified is beyond the capability of the contractor to perform, so that enforcement of the specified requirements raises the possibility of having to terminate the contractor for default. (In this case, the contracting officer may determine that permitting a substitution is preferable to terminating the contract.) |
| | _____ | _____ | Materials or equipment required are "critical materials" (that is, distribution is controlled in accordance with the Defense Materials System of the Department of Commerce, per the Defense Production Act of 1950, as amended), and the absence of an assigned priority on this Postal order makes it impossible for the contractor to make timely purchases. (In this case, the contracting officer may determine that permitting a substitution is preferable to delaying the project.) |
| | _____ | _____ | A newly available material or system fulfills the purpose of the design better than the specified material or system. |
| | _____ | _____ | Appearance, suitability, durability, reliability, or maintenance costs would be enhanced by making the substitution. Specify: |
| 2. | _____ | _____ | A contract modification has been issued citing the <i>Changes</i> clause in the contract. [NOTE: If time does not permit the negotiation of a supplemental agreement, an interim unilateral document may be issued—see PM and PH 6.5.2.] |

Sample 1 for PH 6.2.5, Notices to the Contractor
Notice to Re-establish a Delivery Date

NOTICE TO RE-ESTABLISH A DELIVERY DATE

The delivery date under Contract No. _____ has lapsed. To date, you have not satisfactorily completed the contract in accordance with its terms. This is to advise you that the Postal Service is re-establishing the date for delivery of supplies *[insert "services," if appropriate]* until _____ *[insert a reasonable date]*. At that time, if you have not satisfactorily completed performance of the contract work in accordance with its terms, the Postal Service may pursue its right under Clause B-13, *Termination for Default*.

Sample 2 for PH 6.2.5, Notices to the Contractor
Notice of Forbearance

NOTICE OF FORBEARANCE

The contract delivery date under Contract No. _____ has recently passed. To date, you have not satisfactorily completed the contract in accordance with its terms. This is to advise you that the Postal Service maintains the legal existence of the established delivery date of _____ *[insert date]*; however, the Postal Service will forbear taking any action until _____ *[insert date]*. At that time, if you have not satisfactorily completed performance of the contract work in accordance with its terms, the Postal Service may pursue its right under Clause B-13, *Termination for Default*.

[NOTE: If your contract contains a liquidated damages clause, add the following paragraph.]

You are hereby put on notice that the Postal Service is not waiving its right to liquidated damages under this contract and retains its right to assess liquidated damages from the established delivery date to the completion date of this contract.

Sample 3 for PH 6.2.5, Notices to the Contractor
Demand for Adequate Assurance Notice

DEMAND FOR ADEQUATE ASSURANCE NOTICE

You are notified that the Postal Service considers your _____ *[specify the contractor's failure or failures]* a condition that is endangering performance of Contract No. _____.

Therefore, unless this condition is cured within ten days after receipt of this notice *[insert any longer time frame that you consider reasonable]*, the Postal Service may pursue its right under Clause B-13, *Termination for Default*.

[NOTE: Add the following paragraph only if reprocurement is a possibility.]

If the Postal Service decides to pursue its right of termination for default, it may procure supplies or services similar to those so terminated, and you will be liable to the Postal Service for any excess costs of the reprocurement.

Sample 4 for PH 6.2.5, Notices to the Contractor
Notice of Impending Termination

NOTICE OF IMPENDING TERMINATION

Because you have failed to _____ [*insert "perform Contract No. _____ within the time required by its terms" OR "cure the conditions endangering performance under Contract No. _____"*] as described to you in the Postal Service's notice of _____ [*insert date when demand for adequate assurance notice was issued; alternatively, cite the specific failure of the contractor*] the Postal Service is considering terminating the contract per Clause B-13, *Termination for Default*.

Pending a final decision in this matter, the Postal Service finds it necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on this question to

[insert name and complete address of contracting officer]

within ten days after receipt of this notice. Your failure to present any excuse within this time may be considered an admission that none exists. Your attention is invited to the rights of the Postal Service and your rights as the contractor, and to the liabilities that you may incur if a decision is made to terminate for default.

Any assistance that the Postal Service might give you on this contract or any acceptance by the Postal Service of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Postal Service to condone any delinquency or waive any rights the Postal Service has under the contract.

6.3 Quality Assurance

I. Definitions

Quality Control—all those tasks done *within* an organization to improve the quality of its output. This would include inspection systems set up by a contractor to monitor its own output at key intervals in the contracting process.

Quality Assurance—all those tasks done *outside* an organization to improve and monitor the quality of its output. This would include inspecting done by Postal employees or other paid Postal Service representatives in making sure that the quality of a contractor's delivered products and services are in accordance with the terms of a Postal Service contract.

II. Actions in Response to Nonconforming Supplies or Services

Different levels of inspection and testing are detailed in PM and PH 2.2, PM 6.3, and Handbook AS-706, *Quality Assurance—Procurement and Supply*.

When a defect is discovered as a result of inspection and testing (as discussed in PM 6.3.1.b) you will receive recommendations from quality assurance and technical personnel, but you, the contracting officer, will be ultimately responsible for deciding what action the Postal Service will take in regard to the defect. Your basic choices, given the contract clauses available, are few and simple.

Defects Found Before Acceptance

If the defect is found *before* acceptance, you can—

1. Require the contractor to correct the supplies or services. See PM 6.3.1.b.2. This is usually the best course of action, but for recurring services performed frequently, it is often not possible. If the contractor's remedial actions extend beyond the delivery or performance date, follow the procedures in PM and PH 6.2.5 and PM and PH 6.9.
2. Reject the supplies or services. Note that you must give prompt notice to the contractor of this action. See PM 6.3.1.b.3. ("Prompt" notice of rejection encompasses a wide range of time frames, depending on the product or service. A good rule of thumb is: If the length of the delay in issuing the notice prevents the contractor from intelligently deciding whether the Postal Service's rejection is correct, prevents rework or repair, or causes the contractor unnecessary work or expense, then it is probably not "prompt.")
3. Accept a substitute item or service, with consideration. See PM 6.3.1.b.4.
4. Accept the defective items or services, with consideration for the defect. This requires your written determination. See PM 6.3.1.b.5.

Defects Found After Acceptance

If the defect is found *after* acceptance:

1. In the case of a latent defect (a latent defect is one that exists at the time of acceptance but is not detectable by a reasonable inspection) you can demand consideration. A contractor's liability for latent defects is generally prorated over the useful life of the item. Latent defects can be difficult to prove, and the burden of proof is on the

Postal Service. You must show that a "reasonable" inspection took place, and the "reasonableness" of inspections varies with the product or service being inspected. There is no "reasonable inspection" yardstick used by the courts or boards.

2. In the case of items or services with warranties, you can exercise your rights under the warranty. See PH 6.3-II.
3. You may also have rights under PM 6.3.2.e, Revocation of Acceptance in Whole or in Part.
4. If you have proof that the contractor either was grossly negligent or intentionally deceived the Postal Service, you can regain preacceptance remedies for the Postal Service. In such circumstances, you should immediately consult counsel.

III. Warranty Administration

Distribution and Maintenance of Warranty Information

Before the beginning of the warranty period, you must communicate the essential provisions of the warranty to users, maintenance managers, and others who are in a position to report any incident covered by the warranty. You can do this by distributing copies of the actual warranty if it contains the information below or by distributing a memo covering the information below:

1. Product description,
2. Summary of warranties that apply (for example, repair or replace versus cash or credit),
3. Specific components to which the warranty is applicable (for example, the drive train),
4. Responsibilities of various personnel to report warranty incidents and implement warranty provisions,
5. Duration of warranty,
6. Contact person in the procurement office,
7. Manufacturer's contact person (if direct contact is allowed),
8. Documentation and other requirements, and
9. Packaging and transportation requirements.

The purchasing office should file all warranties in a central location, with copies placed in each applicable contract file. (Normally, the central warranty file should be maintained by materiel management personnel.)

Claims

Warranty claims should be made as soon as possible after the occurrence of a malfunction or other warranted event. Any complaint about warranty service should be referred to the contracting officer for the original contract.

If the contractor refuses to do warranty work, the contracting officer should—

1. Have the work done by others,

2. Assess the costs of the work against the contractor by means of a contracting officer's final decision (see PM 6.8.3), and
3. Send the bill to the Postal Data Center (PDC) for collection if payment is not received within 90 days after the date of the final decision.

6.4 Payments and Financing**6.4.3 Payment****Prompt Payment Documentation**

Each *contract* should contain the following payment information so that you can establish adequate documentation concerning prompt payment and the payment of interest penalties (see PM 6.4.3.c):

1. Payment due date;
2. Separate payment dates, if partial payment is provided for partial executions or deliveries;
3. A stated inspection period following delivery, if necessary, for Postal acceptance of property or services;
4. Complete mailing address of the payment office; and
5. Name, title, and phone number of the contractor's accounts receivable officials.

Each *receiving report* should contain the following payment information:

1. Contract or other authorization number;
2. Product or service description;
3. Quantities received, if applicable;
4. Date property or services were accepted; and
5. Signature, printed name, title, phone number, and mailing address of the receiving official.

See PM 6.3.3 and Management Instruction AS-710-87-15, *Receiving Reports and Payments to Vendors for Supply and Service Contracts*, for more information on processing receiving reports.

Documenting Receipt of Payment Documents

You are responsible for ensuring timely payments by processing all invoices and backup materials to the Postal Data Center (PDC) immediately upon receipt.

An invoice is received for purposes of payment on whichever of the following two dates is later:

1. The date on which a proper (see PM 6.4.2) invoice is actually received by the office specified in the contract, purchase order, or delivery order.

OR

2. The date on which the Postal Service accepts the property or service.

Unless other arrangements are made, contracting and/or receiving personnel must forward receiving reports so that they will be received by the PDC by the fifth business day after acceptance.

PDC personnel will date-stamp the invoices and receiving reports with the date received.

Record Keeping by the PDC

1. *Separate fund.* The PDC will establish a separate fund from which the interest penalties stipulated in the PM at 6.4.3.c will be paid.
2. *Late payment data.* The PDC will keep records of which offices are being charged late payments.
3. *Annual report.* One month following the end of the fiscal year, the PDC will file an annual report to the Assistant Postmasters General of the Procurement and Supply, Facilities, and Mail Processing Departments. The report will show the number of penalty payments and the amount of interest penalties charged to each procurement office.

6.4.5	Progress Payments
--------------	--------------------------

I. Progress Versus Partial Payments

The terms *progress payments* and *partial payments* are not interchangeable.

Partial payments are based on the *acceptance* of a particular part of the contractor's performance.

Progress payments are a form of contract financing and are made before work or deliverables are accepted.

Partial payments are encouraged. Progress payments are not generally encouraged, although the Postal Service recognizes that in certain circumstances they are necessary (see PM 1.7.5 and 6.4.5).

II. Approval of Individual Progress Payments

If Clause 1-3, *Progress Payments*, is in the contract, the preaward decision was made to allow progress payments and you cannot revisit that decision (unless you suspend progress payments per paragraph c of Clause 1-3). Before you approve any individual payment, however, you must ensure that all terms and conditions have been met. You should put the burden of proving compliance on the contractor.

The checklist for this procedure, "Payments Under Clause 1-3, *Progress Payments*," will help you satisfy yourself that individual payments under Clause 1-3 are appropriate.

III. Approval of New Liquidation Rates (6.4.5.d.5)

The ordinary method of liquidating progress payments—which is to use the same liquidation rate as the progress payment rate—does not allow the contractor to recover profit, because the progress payment rate is based on costs only. The only time it is the intention of the

Postal Service to provide additional financing beyond costs incurred is when not providing the additional financing would create a real financial hardship for the contractor.

If you wish to discontinue liquidating progress payments at the same rate as the progress payment rate, you must seek approval from the responsible APMG. Your request for approval should be accompanied by the documentation listed below.

1. Documentation for requests for approval of a *reduced* rate (which would have the effect of increasing Postal payments):
 - A signed request from the contractor for a reduction in the liquidation rate;
 - A statement as to whether there was a previous reduction in the liquidation rate on this contract and, if there was, details as to when the reduced rate was approved, what the reduced rate was, and what amount of payments was made under the rate previously approved;
 - The contractor's most recently audited financial statements; *and*
 - Notification of significant events that (a) occurred either before or after preparation of the financial statements and (b) materially affect the financial condition of the company.
2. Documentation for requests for approval of an *increased* rate (which would have the effect of reducing Postal payments):
 - A statement from the contracting officer as to what substantial evidence is available to indicate that a higher rate is appropriate per paragraph c of Clause 1-3, *Progress Payments*; *or*
 - If the increased rate is in consideration for some other negotiated change to the contract, a contract modification signed by the contractor agreeing to an increased rate.

6.4.7 Assignment of Claims

Administrative Actions—Assignment and Release of Assignment

Definition

The assignee is the financial institution to which the contractor is assigning payment or to which a court or other legal entity has directed that payment be assigned.

Examination of Notices of Assignments

The checklist for this procedure, "Reviewing and Approving Assignment-of-Claims Notices," provides guidelines. Sample 1, "Notice of Assignment," illustrates the type of notice you must receive from the assignee before you can approve the assignment and begin issuing payments to the assignee.

Contract Modification

You must officially modify the contract to acknowledge an assignment of claims. Issue a modification that contains language similar to that shown in Sample 2, "Language for

Contract Modification." Attach a copy of the notice of assignment with an acknowledgment signature.

Release of Assignment

If the assignee releases the contractor from an assignment of claims under a contract, the contractor must re-establish its right to receive payment of the balance due under the contract. The contractor must file a written notice of release, together with a true copy of the release of assignment instrument, with the contracting officer, the sureties or surety under any bond, and the Postal Data Center (PDC).

Checklist for PH 6.4.5-II, Approval of Individual Progress Payments
Payments Under Clause 1-3, Progress Payments

PAYMENTS UNDER CLAUSE 1-3, PROGRESS PAYMENTS

A "No" to any item on this list indicates that an individual progress payment is inappropriate.

No Yes N/A

- | | | | |
|-------|-------|-------|--|
| _____ | _____ | _____ | 1. Is Clause 1-3, Progress Payments, contained in this contract? |
| _____ | _____ | _____ | 2. Did the contractor request this progress payment on Form 7305, Request for Progress Payments? |
| _____ | _____ | _____ | 3. Are the costs that are being billed under this payment reasonable? |
| _____ | _____ | _____ | 4. Are the costs that are being billed under this payment clearly allocable to the contract? |
| _____ | _____ | _____ | 5. Are the costs that are being billed under this payment consistent with sound and generally accepted accounting principles? |
| _____ | _____ | _____ | 6. Is the aggregate amount of progress payments, including this progress payment yet to be paid, less than 80 percent of the total contract price? |
| _____ | _____ | _____ | 7. If this payment includes costs ordinarily capitalized and subject to depreciation and amortization, does the amount being billed include only the appropriate portion of these costs? |
| _____ | _____ | _____ | 8. If this payment includes costs incurred by subcontractors or suppliers, are these costs for completed work (including partial deliveries) to which the contractor has acquired title? |

Checklist for PH 6.4.7, Administrative Actions—Assignment and Release of Assignment
Reviewing and Approving Assignment-of-Claims Notices

REVIEWING AND APPROVING ASSIGNMENT-OF-CLAIMS NOTICES

A check in the "No" column for any item indicates that the assignment or the notice is inappropriate.

No Yes N/A

- | | | | |
|--------------------------|--------------------------|--------------------------|--|
| ☐ | ☐ | ☐ | 1. The contract itself has been properly approved and executed. |
| ☐ | ☐ | ☐ | 2. The contract is one under which claims may be assigned (Clause B-8, Assignment of Claims, is included in the contract, and aggregated payments under the contract are at or above the dollar threshold for aggregated payments stipulated in the clause). |
| ☐ | ☐ | ☐ | 3. The assignment covers <i>only</i> money due or to become due under the contract. |
| ☐ | ☐ | ☐ | 4. The assignment covers <i>all</i> amounts due or to become due under the contract. |
| ☐ | ☐ | ☐ | 5. The assignment is made to one party or to a single agent or trustee representing several parties. |
| ☐ | ☐ | ☐ | 6. If it is a reassignment, you have a written notice of the release of the contractor by the assigning financing institution and a copy of the release instrument. |
| | | | 7. If a corporation (whether a contractor or a financing institution) is involved: |
| ☐ | ☐ | ☐ | a. Is an impressed corporate seal evident on the notice? |
| ☐ | ☐ | ☐ | b. Is the notice signed by an authorized representative of the corporation? |

Checklist for PH 6.4.7, Administrative Actions—Assignment and Release of Assignment
Reviewing and Approving Assignment-of-Claims Notices (continued)

- ☐ ☐ ☐ c. Is the assignment attested to by the secretary or assistant secretary of the corporation?
- ☐ ☐ ☐ 8. If an individual or partnership is involved, whether the contractor or the assignee, has the signature been acknowledged before a notary public or other person authorized to administer oaths?
- ☐ ☐ ☐ 9. If a partnership is involved and only one partner signs, is the notice accompanied by an acknowledged certificate that the signer is a general partner of the partnership?
- ☐ ☐ ☐ 10. Is there evidence that the surety or sureties were notified of the assignment?
- ☐ ☐ ☐ 11. Is there evidence that the PDC was notified of the assignment?
- ☐ ☐ ☐ 12. Do you have a true copy of the instrument of assignment?
- ☐ ☐ ☐ 13. If the instrument of assignment is *not* a court order or other legal order, is it signed by an authorized representative of the contractor?

Sample 1 for PH 6.4.7, Administrative Actions—Assignment and Release of Assignment
Notice of Assignment

NOTICE OF ASSIGNMENT

To: Contracting Officer

Reference Contract No. _____ entered into between
_____ (contractor's name and
address) and the Postal Service, _____
(name and address of Postal Service office) for _____
(describe nature of the contract).

Payments due or to become due under this contract should be made to the undersigned assignee, as evidenced by the true copy of the instrument of assignment attached to this notice.

Please return to the undersigned the enclosed copy of this notice, with appropriate notations showing the date and hour of receipt, signed by the person acknowledging receipt on behalf of the addressee.

Very truly yours,

(name of assignee)

By _____
(signature of assignee or assignee representative)

Title _____
(title of signing officer)

ACKNOWLEDGMENT

I acknowledge receipt of the above notice and of a copy of the instrument of assignment. They were received on:

_____, 19 ____ (date) _____ a.m.
p.m.

(signature)

(title)

On behalf of: _____
(name of addressee of this notice)

cc: Surety (or sureties)
Postal Data Center

Sample 2 for PH 6.4.7, Administrative Actions—Assignment and Release of Assignment
Language for Contract Modification

LANGUAGE FOR CONTRACT MODIFICATION

- a. This modification is a change order issued under the authority of Clause B-8,
Assignment of Claims.
- b. In accordance with the notice of assignment attached to this modification, the payee for
all amounts due or to become due under the terms of this contract is hereby changed

From: The ABC Corporation

1234 Your Street

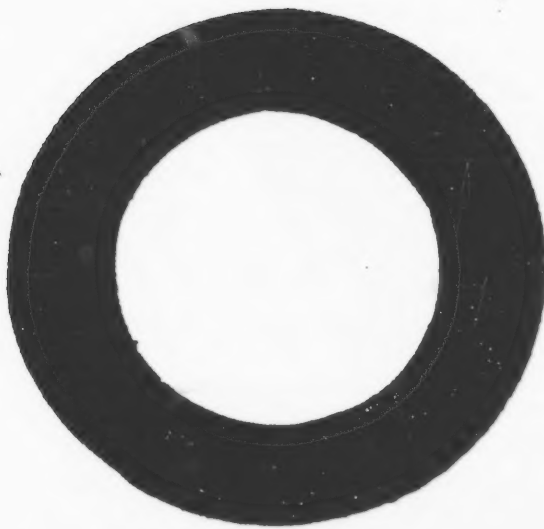
Our Town, CA XXXXX-XXXX

To: Acme Financial Network

791 Their Street

Our Town, CA XXXXX-XXXX

- c. The contract price and all other contract terms and conditions remain the same.



6.5 Contract Modifications

6.5.1 General

I. Practical Considerations for Contract Modifications

1. In a modification that affects price, always cite both a changed dollar figure for a line item total and a changed total contract price. When no price change is contemplated, include language such as the following (unless the modification is strictly administrative [see PM 6.5.1.a.1]): "As a result of this modification, there will be no increase or decrease in contract price."
2. If the modification is bilateral (see PM 6.5.1.c.1), always obtain the contractor's signature before you sign it for the Postal Service.
3. A bilateral modification (supplemental agreement) is preferable to a unilateral agreement (change order). The advantages of a supplemental agreement are that—
 - Both sides are in a better bargaining position before the work is done rather than after,
 - Both sides can plan better for the change, and
 - The contractor is less likely to file a claim.

You may issue a unilateral modification for an address change for contract payment purposes, but ensure that you have a written request for the change from the contractor (see PH 6.5.1-II).

II. Documenting Contract Modifications

You should start a contract modification file when—

1. A change is initiated, either by someone within the Postal Service or by the contractor;
2. The contractor notifies you of a claim; or
3. You become aware that a Postal Service or contractor action may result in a change to the contract.

The checklist for this procedure, "Supporting Data for a Contract Modification," lists items to include in the file.

The principles discussed in PM and PH 4.4.3 in regard to preparing a memorandum of negotiation apply to the process of documenting price increases or decreases as a result of modifications. For smaller-dollar modifications, however, you may use a more abbreviated documentation format. Your documentation should include a reference to any pertinent terms, conditions, or contract clauses that authorize the action you are taking in the modification.

III. Modification Versus New Procurement

When a modification changes the way in which the work is to be performed, you must decide whether the change is "within the scope" of the contract. Your decision must be based

essentially on whether the modification changes the nature of the supplies or the overall work requirement as defined in the original contract. If the essential character of the work is changed, a new procurement is involved.

Radical alterations are "outside the scope." In a major equipment overhaul, the substitution of one grade of steel for another would be "within the scope," but requiring a change from steel to plastic, where no plastic had previously been specified, would be "outside the scope." At the same time, if the specification had called for 50 percent steel tubing and 50 percent plastic tubing, and a change called for half or even all the steel tubing to be replaced with plastic, you could consider the change "within the scope." The bottom line is that you must view the change in the context of the rest of the contract.

The number of changes involved does not necessarily affect your "within the scope" determination; however, you should bear in mind that contracts for technologically sophisticated products and services experience more contract changes than those for relatively simple products and services. Many changes to the specifications for commercial products, for instance, would be clearly suspect.

The purchase of additional supplies or equipment to fill new requirements (a new need) must generally be regarded as new procurement. However, there are two exceptions to this general rule:

1. Exercise of an option to purchase the additional quantities (see PM and PH 6.1.5.f), and
2. Placement of repetitive orders under an indefinite-quantity contract (see PM 5.1.5).

In unusual circumstances, you may issue modifications outside the scope of the original contract. The circumstances must be justified as noncompetitive and must be approved per PM 4.3.2.

Any modification outside the scope of the contract must be issued as a supplemental agreement.

IV. Incorporating a Release of Claims in a Supplemental Agreement

The PM recommends that you incorporate a release of claims into the body of any supplemental agreement that makes an equitable adjustment to the contract. An example of release wording is contained in the sample for this procedure, "Contract Modification to Effect Supplemental Agreement and Incorporate Release of Claims."

For a release to be enforceable as a discharge of a claim, it must have two elements, and these elements should be recited in the release:

1. *Consideration.* The need for consideration is normally satisfied by one party's paying money to the other in exchange for the other's giving up its claim, but the consideration can be other than monetary: an example would be if the Postal Service accepted spare parts in return for officially extending the performance period for equipment that was being delivered late.
2. *Intent.* The law also requires that the release show that both parties intended to settle and discharge the claim in full.

V. Guidance on Exercising Options (6.5.1.f)

Requirements

You do not need sole-source approval to exercise an option, as the action is merely a continuation of a previous contract methodology decision (see PM 2.2.8). However, it is critical that you—

1. Exercise the option in exact compliance with its terms, and
2. Be diligent in your efforts to ensure that current market conditions and other factors still make use of the option a prudent purchasing method.

Investigation of Current Conditions

Some factors you can consider in your informal investigation of prices and the market as required by PM 6.5.1.f.2.(a) are—

1. If the option price was an evaluation factor in the initial award, the overall advantageous position of the awardee in that evaluation given the level of competition available;
2. The relationship of the option price to the price for the initial contract period;
3. The adequacy of competition at the time of initial award as compared with the competition at the time of the option period;
4. Changes in the general economy that could affect the cost of performance;
5. The findings of an informal survey of other contracting activities to see if they have found significant changes in offered prices for similar items or services;
6. Potential savings in administrative costs of exercising the option as compared with awarding a new contract (consider any disruption-of-services costs, if any); and
7. Administrative budget constraints that cause personnel to be unavailable to process a new solicitation.

Notification of Requiring Activities

Your contracting office should have a system of notifying requiring offices that a contract, or the Postal Service's right to exercise an option, is about to expire. The COMPASS system contains software that tracks and prepares such notices. Host COMPASS sites should establish procedures for remote COMPASS sites, using the Contract Administration Module.

Expiration of Option

When the Postal Service's right to exercise an option has expired because proper notice was not given or because funds were not available, no Postal Service action can restore the right. To procure the items or services contained in the expired option, you must follow other contracting procedures, unless the contractor issues a written waiver to its right to proper notice.

Contract Modification

When provided by the terms of the contract, an option will be exercised by the issuance of a unilateral contract modification citing the option clause. See the sample for this procedure, "Contract Modification to Exercise an Option for Services."

6.5.2 Change Orders**I. Funding a Change Order**

When a contractor could experience significant cost increases as a result of a Postal Service change order and time does not permit the negotiation of even a maximum price, you should include in the order a ceiling amount for funding purposes. You should also include language that requires the contractor to notify the contracting officer as soon as the contractor becomes aware that the ceiling amount will be insufficient to cover the work specified in the change order.

See the sample for this procedure, "Change Order Establishing a Ceiling Price," for an example of the type of language needed.

II. Constructive Changes

All Postal Service personnel who play a direct role in contract administration must understand the concept of constructive changes and the importance of avoiding such changes.

A constructive change is an implied change. It occurs when the contracting officer, or his or her duly authorized representative, changes the contract without going through the change order formalities prescribed in the PM. A constructive change can result from either an action or a failure to act.

Common Causes of Constructive Changes

1. *Errors of interpretation by the contracting officer.* An example is when the contract gives the contractor freedom to choose between various methods of performing a task, but the contracting officer insists that the contractor use one of the more costly methods.
2. *Errors of interpretation by the contracting officer's representative.* There is often a fine line between technical monitoring and direction that constitutes a change. Sometimes personnel in the field knowingly order changes they believe are necessary and do so by going outside normal channels, thinking they are speeding up the Postal procurement process. When your representatives knowingly issue constructive changes to a Postal Service contract, you should seek administrative remedial action.
3. *Failure to issue a change to correct a defective specification.* It is critical that you make every effort to resolve difficulties with specifications, because the Postal Service will probably end up paying for the additional effort the contractor expends in trying to deal with the defective specification.
4. *Changes outside the scope of the original contract.* Two examples of changes that are outside the scope of the original contract and would be considered constructive changes are changes ordered in off-the-shelf commercial items or changes in the quantity of work.
5. *Acceleration.* The most common constructive acceleration situation involves an order by the contracting officer to meet the original schedule despite the occurrence of excusable delays. This has the same effect as requiring the contractor to perform the work in a shorter time than provided in the contract.

6. *Failure to cooperate.* You have an implied duty to cooperate with the contractor and ensure that the Postal Service keeps all promises it has made under the contract. Postal Service actions (untimely delivery of Postal Service-furnished property, and so on) that result in a contractor's having to alter the planned sequence of performance are examples of this kind of constructive change.

Need for Formalization

A contractor's claim for a constructive change is subject to resolution under the Claims and Disputes clause like other claims. To avoid the delays and complications which ensue when litigation occurs, you should try to resolve claims involving constructive changes as soon as you become aware of them. When justified, negotiate a supplemental agreement that reflects an equitable adjustment for the change.

6.5.3 Equitable Adjustments for Delays

Calculating Equitable Adjustments

Objective

The objective of an equitable adjustment is to make sure that a contractor will make the same overall percentage of profit or loss after a change that it would have made without the change. You must therefore keep both parties, Postal Service and contractor, in relatively the same position after the change as before the change. Focus on making an adjustment—in price, delivery schedule, or both—that is fair. The illustration for this procedure, "Reaching an Equitable Adjustment," details the concept.

Approaches to Measuring Equitable Adjustments

Several approaches have been used over the years to reach equitable adjustments. No one approach will fit each situation, although some approaches are to be preferred over others.

Following are some general guidelines.

1. *Objective Approach*

This approach holds that the Postal Service should pay for only the reasonable value of the change—what the change should cost, rather than what it actually cost. It is the most preferable approach, but it can be used only when a change is prepriced or when pricing can be accomplished by amicable negotiation with the contractor.

2. *Subjective Approach*

The opposite of the objective approach, this approach holds that the Postal Service should pay the actual cost of a change—that is, the actual impact of the change on the "subject," the contractor. There are three problems with this approach:

- It can only be used after the fact, once the changed work is done.
- It requires that the contractor have an accounting system that is sophisticated enough to isolate the cost of a change from the cost of the original work, and to track the cost of the change through both material and labor expenditures.



- The actual cost of the change may or may not represent a reasonable value for the changed work.

For these reasons, the subjective approach should be used only when attempts to negotiate an equitable adjustment have been unsuccessful, and only as modified by *Bruce Rule* concepts (see below).

3. *Bruce Rule Approach*

In 1963 a landmark ruling called the *Bruce Rule* (arising out of a Claims Court decision in *Bruce Construction Corporation v. United States*, 324 F.2d 516) established the basic test upon which most pricing of equitable adjustments now relies. That test is summarized in the phrase "actual costs, reasonably incurred." Its essence is that the contractor should be paid the amount that the changed work has actually cost, as reflected in historical data on prices paid for supplies, labor, subcontract work, and so forth—as long as those actual costs can be considered reasonable in the context of the circumstances in which they were incurred. Actual costs are presumed to be reasonable unless the contracting agency can show that they should not have been expended, or were more than were justified in the particular situation.

4. *Jury Verdict Approach*

This approach must be used when costs cannot be isolated and identified and the Postal Service and its contractor have to reach an equitable adjustment on the basis of estimates alone. It is used *after* a dispute has arisen. The approach involves a hearing of all the evidence, including the opinions of qualified experts and specialists representing both the Postal Service and the contractor (the "jury"). Checklist 1, "Use of the Jury Verdict Approach," details the conditions that must be met for the approach to be used. Normally, the approach is court-imposed or Board-imposed, but a contracting officer could use it to keep a dispute from leading to costly litigation.

5. *Total Cost Approach*

This approach takes the total cost of the work done (under the original contract and the change) and subtracts the estimated cost of the work that would have been done were it not for the change. It is based on the contractor's own estimated cost of the work that would have been done.

For at least two reasons, this approach is the least desirable one:

- The contractor could be paid not only the proper costs for the work but also costs it has incurred due to its own errors and inefficiencies.
- The contractor could "get well" at the expense of the Postal Service—that is, if the contractor submitted an unrealistically low offer in order to improve its chances of getting the original work, it could make up for it through the Postal Service's paying extra, in effect, for the changed work.

The total cost approach should be used only when there is no better method available, and only when certain conditions can be met. Checklist 2, "Use of the Total Cost Approach," details the conditions under which the approach may be used when necessary.

Cost Information

The elements of cost most commonly involved in equitable adjustments are—

- Labor inefficiency costs,
- Added direct labor costs,
- Added supervision costs,
- Overtime costs, and
- Added indirect (overhead) costs (see Checklist 3, "Contractor's Entitlement to Added Indirect (Overhead) Costs on Equitable Adjustments").

There is no formula for properly evaluating a contract change, but for changes involving more than a few thousand dollars, you will probably want costs broken down at least into the detail outlined in Checklist 4, "Breakdown of Costs for Equitable Adjustments."

Evaluation

In evaluating the data you receive, you must use price analysis and you will probably use cost analysis. See PM and PH 5.2 and 5.3.

One important element of equitable adjustment pricing that is normally not a concern in the initial contract pricing evaluation is the "ripple" effect of a change. In addition to affecting the work changed, a change can also affect the balance of the contract work in ways not specifically cited in the changed specifications. For example, the work not changed could be affected by the need to substantially revise plant scheduling of equipment, or the flow of work and manufacturing routines may be disrupted or efficiency and learning reduced substantially. It is important, therefore, that you scrutinize a change for its effect on all contractual elements.

6.5.4 Novation and Change-of-Name Agreements

I. Handling Novation Requests

Purpose of Novation

The purpose of a contract novation is threefold:

1. To have the contractor (transferor) guarantee performance of the contract by the successor contractor (transferee);
2. To have the successor in interest (transferee) assume all obligations under the contract; and
3. To have the Postal Service formally recognize the transfer of the contract and related assets.

Steps to Be Taken

1. Any contracting officer who receives a request from a contractor for a contract novation should—
 - Notify the Procurement Policies and Programs Division (PP&PD) to alert other Postal Service contracting offices, and

- Ask the transferor for a list of all affected contracts and purchase orders that remain unsettled between the transferor and the Postal Service, showing for each—
 - contract number,
 - total dollar value as amended, and
 - remaining unpaid balance.

The contracting officer who has the contract with the largest unsettled dollar balance, as stipulated by PP&PD, will normally handle the novation for all affected Postal Service contracts.

2. The contracting officer who is handling the novation request must determine whether to permit it, referring to PM 6.5.4.c and consulting with assigned counsel. If novation is permitted, there should be documentation indicating a clear exception to the Postal Service policy of prohibiting contract novations. Such documentation will include—

- An authenticated copy of the instrument effecting the transfer of assets: a bill of sale, certificate of merger, contract, deed, agreement, or court decree;
- A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;
- A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;
- An authenticated copy of the transferee's certificate and articles of incorporation if a corporation was formed for the purpose of receiving the assets involved in performing the Postal Service contract or contracts;
- The opinion of legal counsel for the transferor and transferee, stating that the transfer was properly effected under applicable law and giving the effective date of transfer;
- Evidence of the transferee's capability of performing the contract or contracts; and
- Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, certified for accuracy by independent accountants.

The consent of sureties on all affected Postal Service contracts is necessary if bonds are required—or, alternatively, a statement from the transferor that no bonds are required.

3. In the unusual circumstances when novation is appropriate, the responsible contracting officer must issue a copy of the novation agreement—signed by all three parties—to each Postal Service contracting officer affected by the agreement.
4. Each contracting officer is then responsible for issuing a modification to his or her own contract that references and attaches a copy of the agreement. Issue the modification to the successor contractor and provide a copy to the transferor. See Sample 1, "Modification Recognizing a Contract Novation," and Sample 2, "Novation Agreement."

Disapproval of Small-Dollar Contract Novations

When the remaining balances on all Postal Service contracts affected by the novation do not exceed \$50,000, a request for novation should generally be disapproved as being too administratively burdensome.

II. Handling Change-of-Name Notification (6.5.4.d)

1. Any contracting officer who receives notification of a change in a contractor's name should—
 - Notify the Procurement Policies and Programs Division (PP&PD) to alert other Postal Service contracting offices, and
 - Ask the contractor for a list of all affected contracts and purchase orders that remain unsettled between it and the Postal Service, showing for each—
 - contract number,
 - total dollar value as amended, and
 - remaining unpaid balance.

The contracting officer who has the contract with the largest unsettled dollar balance, as stipulated by PP&PD, will normally handle the name change for all affected Postal Service contracts.

2. The contracting officer who is handling the name change should obtain a signed change-of-name agreement from the contractor, in addition to the following documentation:
 - An authenticated copy of the instrument effecting the name change, and
 - The opinion of the contractor's legal counsel stating that the change of name was properly effected under the applicable law and showing the effective date.
3. When more than one contract is involved, the responsible contracting officer must issue a copy of the agreement—signed by both parties—to each Postal Service contracting officer affected by the agreement.
4. Each contracting officer is then responsible for issuing a modification to his or her own contract that references and attaches a copy of the agreement. See Sample 1, "Modification Recognizing a Change of Name," and Sample 2, "Change-of-Name Agreement."

Checklist for PH 6.5.1-II, Documenting Contract Modifications
Supporting Data for a Contract Modification

SUPPORTING DATA FOR A CONTRACT MODIFICATION

Place a check by each *pertinent* item when you add it to your file.

- _____ 1. The document originating the proposed change. This item may be a formal letter, a memorandum, or documentation of an event occurring on the job site. Regardless of the form, any originating document should be included.
- _____ 2. Contract change document or documents (change order, supplemental agreement, or both). These documents should contain the contract number and any other pertinent references.
- _____ 3. A cost estimate of the changed work, if applicable. The estimate should be prepared before a proposal is requested, to document budget estimates as well as provide you with a format for requesting a price breakdown from the contractor. If Postal and contractor breakdowns have the same elements, subsequent analyses, comparisons, and negotiations will be simplified.
- _____ 4. The Postal Service's request to the contractor for a proposal, if any.
- _____ 5. The contractor's proposal.
- _____ 6. A record of negotiations, if any, to establish an equitable price adjustment or other concessions made by either party.
- _____ 7. A contract modification completed and signed by the contractor and the contracting officer.

Sample for H 6.5.1-IV, Incorporating a Release of Claims in a Supplemental Agreement
Contract Modification to Effect Supplemental Agreement and Incorporate Release of Claims

**CONTRACT MODIFICATION TO EFFECT SUPPLEMENTAL
AGREEMENT AND INCORPORATE RELEASE OF CLAIMS**

- a. This modification (M04) is a supplemental agreement entered into under the authority of Clause B-2, *Changes*.
- b. This modification definitizes M02 to this contract.
- c. Line item #4A is hereby changed to read \$43 each for a total of \$4,300 (in lieu of \$40 each for a total of \$4,000).
- d. The total contract price is hereby changed to read \$147,000 (in lieu of \$144,000).
- e. In consideration of the amount detailed in c and d above, the contractor hereby releases the Postal Service from any and all liability under this contract for further equitable adjustments resulting from the issuance of M02 to this contract. The contractor hereby agrees that this M04 constitutes full and final settlement of its proposal #88-02 dated January 29, 1988.

Sample for PH 6.5.1-V, Guidance on Exercising Options
Contract Modification to Exercise an Option for Services

**CONTRACT MODIFICATION TO EXERCISE
AN OPTION FOR SERVICES**

- a. This modification is issued under the authority of Clause 2-20, *Option to Extend the Term of the Contract*.
- b. The modification is issued following the Postal Service letter notification of intent to exercise the option dated July 1, 1988, and received by the contractor on July 5, 1988.
- c. The modification incorporates the services stipulated in contract line item 1B for the period October 1, 1988, through September 30, 1989.
- d. Accordingly, the total contract price is hereby increased
 - TO: \$294,000
 - FROM: \$144,000

Sample for PH 6.5.2-I, Funding a Change Order
Change Order Establishing a Ceiling Price

CHANGE ORDER ESTABLISHING A CEILING PRICE

- a. This modification is a change order issued under the authority of Clause B-2, *Changes*.
- b. This modification directs the contractor to proceed immediately in performing its work under this contract as outlined in Change #3 to the statement of work, which is attached to this modification and is hereby made a part of this contract.
- c. Until such time as a supplemental agreement is issued definitizing this modification and providing for an equitable adjustment to the contract (if appropriate), the Postal Service will not be obligated to pay the contractor any amount in excess of \$20,000 for work performed under Change #3 to the statement of work. This increases the contract price

FROM: \$240,000
TO: \$260,000 CEILING PRICE
- d. The contractor is not obligated to continue performance if doing so would exceed the ceiling price. The contractor is obligated to notify the contracting officer immediately when the ceiling price has been reached.

Illustration for PH 6.5.3, Calculating Equitable Adjustments
Reaching an Equitable Adjustment

REACHING AN EQUITABLE ADJUSTMENT

One case that is often cited as clearly illustrating the concept of maintaining the contractor in the same overall profit or loss position is *Keco Industries, Inc.* (176 Ct. Cl. 983, 1966). In that case, Keco had been awarded a contract for 200 refrigeration units. One hundred of the units were to be electricity-driven and 100, gasoline-driven. Before any of the gasoline units were produced, the Government issued a change order directing that the 100 gasoline-driven units be changed to electricity-driven units (that is, the contract as modified called for 200 electricity-driven units).

A Government audit revealed that, before the change, the contractor was in a loss position on both types of units. However, the loss position on the electric units was \$332.58 per unit, whereas the loss on the gasoline unit was only \$148.80 per unit. Therefore, if the Government attempted to base its price adjustment on the price difference between the electric unit and the gas unit, the contractor would be thrown into an even greater loss position. If, on the other hand, the Government granted an adjustment giving the contractor its actual cost for manufacturing the units altered by the change order, the contractor would be able to recoup some of the loss it would suffer regardless of the change.

The contractor's total loss position before the change was \$48,138. In order to leave the contractor in the same position the contractor was in before the change was issued, the adjustment had to be figured as follows:

Price per gasoline unit	\$1,720.00
Less cost difference between the gasoline unit and the electric unit (\$1,868.80 - \$1,603.58)	<u>\$ 265.22</u>
Price per unit for the 100 units covered by the change order	<u>\$1,454.78</u>
Contractor's loss position after the adjustment:	
100 electric units unchanged by the order:	
\$1,603.58 (cost per unit)	
minus <u>1,271.00</u> (contract price per unit)	
\$332.58 (loss per unit) x 100 units =	<u>\$33,258.00</u>
100 units covered by the change order	
\$1,603.58 (cost per unit)	
minus <u>\$1,454.78</u> (equitable adjustment price per unit)	
\$148.80 (loss per unit) x 100 units =	<u>\$14,880.00</u>
Total loss on contract after the adjustment	<u>\$48,138.00</u>

Checklist 1 for PH 6.5.3, Calculating Equitable Adjustments
Use of the Jury Verdict Approach

USE OF THE JURY VERDICT APPROACH

If you cannot check "True" for *all* the following conditions, the jury verdict approach is inappropriate.

True

False

- | | | |
|-------|-------|--|
| _____ | _____ | 1. The parties are in a dispute relating to conflicting estimates. |
| _____ | _____ | 2. Actual costs cannot be segregated and identified. |
| _____ | _____ | 3. Both parties rely on the opinion of qualified experts to estimate the costs incurred. |

Checklist 2 for PH 6.5.3, Calculating Equitable Adjustments
Use of the Total Cost Approach

USE OF THE TOTAL COST APPROACH

If you cannot check "True" for *all* the following conditions, the total cost approach is inappropriate.

- | True | False | |
|-------|-------|--|
| _____ | _____ | 1. No other approach is feasible. It is impossible or highly impractical to detail the cost impact of a change with a reasonable degree of accuracy. |
| _____ | _____ | 2. The lack of evidence on cost impact is <i>not</i> due to the contractor's negligence in keeping cost records. |
| _____ | _____ | 3. The original offer is reasonable. |
| _____ | _____ | 4. The actual costs are reasonable. |
| _____ | _____ | 5. The contractor is not responsible for the added expenses. |

Checklist 3 for PH 6.5.3, Calculating Equitable Adjustments***Contractor's Entitlement to Added Indirect (Overhead) Costs on Equitable Adjustments*****CONTRACTOR'S ENTITLEMENT TO ADDED INDIRECT (OVERHEAD)
COSTS ON EQUITABLE ADJUSTMENTS**

A "No" response to *any* item on this checklist indicates that the contractor is *not* entitled to an equitable adjustment for unabsorbed (added) indirect costs.

No

Yes

Was the contract work delayed, suspended, disrupted, or accelerated by the Postal Service? (Note: The burden of proof is on the contractor.)

Will the contractor submit to an audit of its books and records?

Was the contractor's overhead unabsorbed or increased over what it was during a normal period? (Note: Audit report is your source of information on this.)

Has the contractor proven that it has attempted to mitigate its damage—that is, sought other work to offset this overhead and spread it out on other jobs? (Note: The audit report is your normal source of information on this.)

Checklist 4 for PH 6.5.3, Calculating Equitable Adjustments
Breakdown of Costs for Equitable Adjustments

BREAKDOWN OF COSTS FOR EQUITABLE ADJUSTMENTS

Although you should analyze each change on the basis of its own requirements, you will probably want costs categorized in at least the following detail. When you receive evidence on a cost category from the contractor, place a check in the first column. Add more categories at the end, if necessary.

(CAUTION: This checklist is a general guide to the types of cost information *usually* needed. Before you ask for a specific breakdown in a request for proposal, look at your Postal Service estimate and the contractor's original proposal. Pattern the request to reflect their cost breakdown elements. This will make it much easier to compare the proposal with the estimate and original proposal.)

Received N/A

_____	_____	Materials--by trades and unit costs
_____	_____	Labor--by trades and unit costs, and in relation to specific materials and operations
_____	_____	Equipment (for change only)
_____	_____	Engineering (if any), including preparation or revision of shop drawings
_____	_____	Labor burden costs--that is, worker's compensation and public liability insurance, employment taxes, and other fringe benefits
_____	_____	Bond costs (if amount is revised)
_____	_____	Overhead (home office and field office)
_____	_____	Profit
_____	_____	Other:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Sample 1 for PH 6.5.4 -I, Handling Novation Requests
Modification Recognizing a Contract Novation

MODIFICATION RECOGNIZING A CONTRACT NOVATION

- a. This modification is a supplemental agreement entered into under the authority of Clause B-8, *Assignment of Claims*.
- b. This modification recognizes a successor in interest in this contract for operation of a contract postal unit, effective _____ (insert effective transfer date). This change is due to the sale of all the contractor's assets and confirms the three-party novation agreement attached to and made a part of this modification. This modification therefore transfers all obligations under this contract

TO: The XYZ Corporation (Transferee)
 678 Broadway
 Our Town, MI XXXXX-XXXX

FROM: The ABC Corporation (Transferor)
 1234 Main Street
 Our Town, MI XXXXX-XXXX

- c. The contract price and all terms and conditions remain the same.
- d. Name and location of contract postal unit:

Contract Station No. 9
745 Oak Drive
Anytown, MI XXXX-XXXX

Sample 2 for PH 6.5.4-I, Handling Novation Requests
Novation Agreement

NOVATION AGREEMENT

(a) THE PARTIES TO THIS AGREEMENT:

THE ABC CORPORATION (Transferor), a corporation duly organized and existing under the laws of _____ (insert State in which transferor was incorporated) with its principal office in _____ (insert city); THE XYZ CORPORATION (Transferee) (if appropriate, also refer to other names the transferor and transferee may have used or are using— for example, "formerly known as the EFG Corporation"), a corporation duly organized and existing under the laws of _____ (insert State in which transferor was incorporated) with its principal office in _____ (insert city); and the U. S. POSTAL SERVICE enter into this agreement as of _____ (insert the date the transfer of assets became effective under applicable State law).

(b) THE FACTS ON WHICH THE PARTIES AGREE AND WHICH FORM A BASIS FOR THIS AGREEMENT:

(1) THE U. S. POSTAL SERVICE has entered into contractual agreements with the transferor, namely _____ (insert contract/purchase order numbers here or refer to an exhibit that lists contract and purchase order numbers and attach it to the novation agreement) and any other contractual agreements not specifically identified in this agreement, including modifications to those contractual documents made between the U.S. Postal Service and the transferor before the effective date of this agreement. Included in the term "contractual agreements" are those contractual agreements under which performance has been accepted and payment has been completed if the U.S. Postal Service or the transferor has any remaining rights, duties, or obligations under these contractual agreements. Hereafter the term "contract" shall include all those contractual agreements as defined in this paragraph (b) (1).

(2) As of _____, 19____ (insert the date referenced above in paragraph (a) as the effective transfer date), the transferor has transferred to the transferee all the assets of the transferor by virtue of a _____ (insert a term descriptive of the legal transaction involved, such as court decree, bill of sale, etc.) between the transferor and the transferee.

(3) The transferee has acquired all of the assets of the transferor by virtue of the above transfer (if not all assets of the transferor were transferred, you may substitute: "The transferee has acquired the entire portion of the transferor's assets necessary to perform the contracts.")

(4) The transferee has assumed all obligations and liabilities of the transferor under the contracts by virtue of the previously mentioned transfer.

(5) The transferee is in a position fully to perform all obligations that may exist under the contracts.

Sample 2 for PH 6.5.4-I, Handling Novation Requests
Novation Agreement (continued)

(6) It is consistent with the Postal Service's interest to recognize the transferee as the successor party to the contracts.

(7) Evidence of the above transfer has been filed with the Postal Service.

(When a name change is also involved—that is, a prior or concurrent change of the transferee's name—an appropriate statement shall be inserted such as the following paragraph 8.)

(8) A certificate dated _____, 19____, signed by the Secretary of State of _____ (insert State), to the effect that the corporate name of the EFG CORPORATION was changed to XYZ CORPORATION on _____, 19____, has been filed with the Postal Service.

(c) IN CONSIDERATION OF THESE FACTS, THE PARTIES HEREBY AGREE THAT:

(1) The transferor confirms the transfer to the transferee, and waives any claims and rights it now has or may have in the future against the Postal Service in connection with the contracts.

(2) The transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The transferee also assumes all obligations and liabilities of and all claims against the transferor under the contracts as if the transferee were the original party to the contracts.

(3) The transferee ratifies all previous actions taken by the transferor with respect to the contracts, with the same force and effect as if the action had been taken by the transferee.

(4) The Postal Service recognizes the transferee as the transferor's successor in interest in and to the contracts. The transferee by this agreement becomes entitled to all rights, titles, and interests of the transferor in and to the contracts as if the transferee were the original party to the contracts. Following the effective date of this agreement, the term "contractor" as used in the contract shall refer to the transferee.

(5) Except as expressly provided in this agreement, nothing in it shall be construed as a waiver of any rights of the Postal Service against the transferor.

(6) All payments and reimbursements previously made by the Postal Service to the transferor, and all other previous actions taken by the Postal Service under the contracts, shall be considered to have discharged those parts of the Postal Service's obligations under the contracts. All payments and reimbursements made by the Postal Service in the name of the transferor after the date of this agreement shall have the same force and effect as if made to the transferee and shall constitute a complete discharge of the Postal Service's obligations under the contracts, to the extent of the amounts paid or reimbursed.

Sample 2 for PH 6.5.4-I, Handling Novation Requests
Novation Agreement (continued)

(7) The transferor and the transferee agree that the Postal Service is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this agreement, other than those that the Postal Service in the absence of this transfer or agreement would have been obligated to pay or reimburse under the terms of the contracts.

(8) The transferor guarantees payments of all liabilities and the performance of all obligations that the transferee (i) assumes under this agreement or (ii) may undertake in the future, should these contracts be modified under their terms and conditions. The transferor waives notice of, and consents to, any such future modifications.

(9) The contracts shall remain in full force and effect, except as modified by this agreement.

THE U.S. POSTAL SERVICE

By _____

Title _____

THE ABC CORPORATION

By _____ (Corporate Seal)

Title _____

THE XYZ CORPORATION

By _____

Title _____

Sample 2 for PH 6.5.4-I, Handling Novation Requests
Novation Agreement (continued)

CERTIFICATE

I, _____, certify that I am the Secretary of the ABC Corporation; that _____, who signed this agreement for this corporation, was then of this corporation; and that this agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____ day of _____, 19____.

By _____ (Corporate Seal)

CERTIFICATE

I, _____, certify that I am the Secretary of the XYZ Corporation; that _____, who signed this agreement for this corporation, was then of this corporation; and that this agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____ day of _____, 19____.

By _____ (Corporate Seal)

Sample 1 for PH 6.5.4-II, Handling Change-of-Name Notification
Modification Recognizing a Change of Name

MODIFICATION RECOGNIZING A CHANGE OF NAME

- a. This modification is a supplemental agreement entered into under the authority of Clause B-8, *Assignment of Claims*.
- b. This modification recognizes a successor in interest in this contract for operation of a contract postal unit, effective _____ (insert effective transfer date). This change is due to the sale of all of the contractor's assets and confirms the three-party novation agreement attached to and made a part of this modification. This modification therefore transfers all obligations under this contract

TO:	The XYZ Corporation (Transferee) 678 Broadway Our Town, MI XXXXX-XXXX
FROM	The ABC Corporation (Transferor) 1234 Main Street Our Town, MI XXXXX-XXXX

- c. The contract price and all terms and conditions remain the same.
- d. Name and location of contract postal unit:

Contract Station No. 9
745 Oak Drive
Anytown, MI XXXXX-XXXX

Sample 2 for PH 6.5.4-II, Handling Change-of-Name Notification
Change-of-Name Agreement

CHANGE-OF-NAME AGREEMENT

(a) **THE PARTIES TO THIS AGREEMENT:**

THE ABC CORPORATION (Contractor), a corporation duly organized and existing under the laws of _____ (insert State having jurisdiction for the name change), and the U.S. POSTAL SERVICE enter into this agreement as of _____ (insert the date when the name change became effective under applicable State law).

(b) **THE FACTS ON WHICH THE PARTIES AGREE AND WHICH FORM A BASIS FOR THIS AGREEMENT:**

(1) THE U.S. POSTAL SERVICE has entered into contractual agreements with the XYZ Corporation, namely _____ (insert contract/purchase order numbers here or refer to an exhibit that lists contract and purchase order numbers, and attach it to the change-of-name agreement) and any other contractual agreements not specifically identified in this agreement, including modifications to those contractual documents made between the U.S. Postal Service and the contractor before the effective date of this agreement. Included in the term "contractual agreements" are those contractual agreements under which performance has been accepted and payment has been completed if the U.S. Postal Service or the transferee has any remaining rights, duties, or obligations under these contractual agreements. Hereafter the term "contract" shall include all those contractual agreements as defined in this paragraph (b) (1).

(2) The XYZ Corporation, by an amendment to its certificate of incorporation, dated _____, 19____ has changed its corporate name to ABC Corporation.

(3) The transferee has acquired all the assets of the transferor by virtue of the above transfer. (If not all assets of the transferor were transferred, you may substitute: "The transferee has acquired the entire portion of the transferor's assets necessary to perform the contracts.")

(4) Documentary evidence of this change of corporate name has been filed with the Postal Service.

(c) **IN CONSIDERATION OF THESE FACTS, THE PARTIES HEREBY AGREE THAT:**

The contracts covered by this agreement are amended by substitution of the name "ABC Corporation" for the name "XYZ Corporation" wherever it appears in the contracts.

Sample 2 for PH 6.5.4-II, Handling Change-of-Name Notification
Change-of-Name Agreement (continued)

THE U.S. POSTAL SERVICE

By _____

Title _____

THE ABC CORPORATION

By _____ (Corporate Seal)

Title _____

CERTIFICATE

I, _____, certify that I am the Secretary of the ABC Corporation; that _____, who signed this agreement for this corporation, was then of this corporation; and that this agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____
day of _____, 19____.

By _____ (Corporate Seal)

6.6 Postal Service Property**Guidelines for Furnishing Postal Service Property****Postal Service Responsibilities**

When the Postal Service assumes an obligation to furnish property to a contractor, it also assumes a direct role in the performance of the contract. It is therefore essential that you coordinate the delivery of the exact property detailed in the contract—in serviceable condition (unless the property is to be furnished "as is"; see Clause 2-14, *Postal Service Property—Furnished "As Is"*), in the proper quantities, and at the time and place stated in the contract. The contractor can point to delays and discrepancies to justify claims of higher costs, schedule delays, and other problems.

The Office of Materiel Management is responsible for monitoring the contractor's compliance with property clauses contained in the contract in connection with Postal-furnished hardware and equipment of any kind. When required (see PM 6.6.2.b), the Office of Materiel Management keeps the master records on Postal equipment and hardware items furnished to contractors. Handbook AS-701, *Materiel Management*, details the procedures.

The procurement office is responsible for monitoring the contractor's compliance with property clauses in connection with Postal-furnished studies, books, drawings, data packages, software, and records of any kind, and for keeping the master records of such property when required (see PM 6.6.2.b). Get receipts from the contractor that identify all items furnished so you can make sure that everything has been returned before closing out the contract.

Benefits to the Postal Service in Furnishing Its Property

Furnishing Postal Service property rightly entails a good deal of administrative effort. That effort should benefit the Postal Service in at least one of the following ways:

1. *Economy*—a reduced contract price because the contractor does not have to pay to acquire property that the Postal Service already owns.
2. *Standardization*—fewer inventory and spare parts problems in the future because the Postal Service furnished the same materials or equipment to several contractors working on similar projects.
3. *Increased Competition*—since contractors who otherwise could not have carried the excessive upfront costs of the equipment were enabled to compete.
4. *Expedited Production*—the potential for faster delivery because long lead-time items were furnished by the Postal Service.

Contractor Responsibilities

Generally, a contractor will have the following responsibilities under the clauses governing Postal-furnished property:

1. Use the property only for authorized purposes.
2. Account for such use.

3. Maintain and control the property in a businesslike manner, segregating records on Postal-furnished equipment from records on property purchased by the contractor and identified as Postal property (because record keeping responsibilities vary—see PM 6.6.2.b).
4. Dispose of the property as directed.
5. Protect the Postal Service's ownership interests.
6. Assume some risk of loss. The degree of risk depends on the contract type. In fixed-price contracts, the contractor is liable for all risk except reasonable wear and tear or consumption of the property in normal performance of the contract. In cost-type contracts, the contractor assumes liability only for negligence and for risks covered under its ordinary business insurance.

6.7 Subcontracting Policies and Procedures**I. Disapproving Subcontracts**

When Clause B-18, *Subcontracts*, is contained in the contract you are administering, you should get a notice of intent to subcontract if the prime contractor intends to do any subcontracting. Immediately upon receipt of the notice, use the checklist for this procedure, "Assessing Adequacy of the Advance Notice to Subcontract," to ensure that you have all the required information. You have 15 days to disapprove the subcontract. Note that you are not to provide approval (see PM 6.7.1.b).

II. Monitoring a Subcontractor's Performance

In dealing with subcontractors, the most important thing to remember is that the Postal Service does not have a contract with them. Therefore, you should have no direct contact with them unless a representative of the prime contractor is also present.

Generally, you should not need to have direct contact with a subcontractor. However, direct contact may be justifiable in cases such as the following:

1. When a prime contractor brings an important subcontractor to a postaward orientation conference; or
2. When the contract calls for an in-process inspection that requires you to visit a subcontractor's plant.

You must be careful to issue instructions or provide feedback to the prime contractor only. It is the prime contractor's responsibility to deal with its subcontractors.

Checklist for PH 6.7-I, Disapproving Subcontracts
Assessing Adequacy of the Advance Notice to Subcontract

ASSESSING ADEQUACY OF THE ADVANCE NOTICE TO SUBCONTRACT

A "No" answer to any question on this list indicates that you do not have all the required information.

No	Yes	N/A	
_____	_____	_____	Does the notice describe the supplies or services to be subcontracted?
_____	_____	_____	Does the notice identify the contract type of the proposed subcontract?
_____	_____	_____	Does the notice identify the proposed subcontractor with an explanation of why and how it was selected, including the competition obtained?
_____	_____	_____	Does the notice identify the proposed subcontract price, accompanied by the prime contractor's cost or price analysis?
_____	_____	_____	If required by the contract, does the notice contain the subcontractor's current, complete, and accurate cost or pricing data?
_____	_____	_____	Does the notice include a memorandum of negotiation between the prime contractor and proposed subcontractor?
_____	_____	_____	Does this memorandum of negotiation reflect:
_____	_____	_____	the principal elements of the subcontract price negotiations?
_____	_____	_____	the most significant considerations controlling the establishment of initial or revised prices?
_____	_____	_____	the reason that cost or pricing data were or were not required?
_____	_____	_____	the extent, if any, to which the prime contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price?

Checklist for PH 6.7-I, Disapproving Subcontracts
Assessing Adequacy of the Advance Notice to Subcontract (continued)

No	Yes	N/A	
_____	_____	_____	(a) the extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; (b) the resulting action, if any, taken by the prime contractor and subcontractor; (c) and the effect of any such defective data on the total price negotiated?
_____	_____	_____	the reasons for any significant difference between the prime contractor's price objective and the price negotiated?
_____	_____	_____	a complete explanation of the incentive fee or profit plan (when incentives are used). The explanation must identify each critical performance element, the management decisions used to quantify each incentive element, the reasons for the incentives, and a summary of all tradeoff possibilities considered.

6.8 Claims and Disputes

6.8.3 Decision and Appeal

I. Assembling and Forwarding an Appeal File

(NOTE: PH 6.8.3-II, below, addresses assembly of files under the small claims (expedited) procedure.)

Physical Organization

Provide a front and back cover to your appeal file and fasten it at the top or left side with durable fasteners. Binders that allow the file to lie flat or nearly flat when opened are preferable.

Insert pages so that their contents may be easily read without the file's having to be disassembled. When file documents contain pages printed on both sides, either copy the pages so that the text appears on only one side of the page or else insert the pages so that both sides can be read without the file's having to be turned upside down.

Each tab should contain only one document, with enclosures if relevant.

If the appeal file is voluminous, divide it into two or more volumes. If practicable, no individual volume should be thicker than approximately two inches. Tab numbers on multivolume appeal files should be continuous throughout all volumes—that is, they should *not* begin at "1" for each volume.

You may wish to place drawings in a separate volume. Insert large drawings to facilitate their removal for ready reference. One method is to fold them and insert them into envelopes that are, in turn, fastened into the appeal file, so that the drawings can be removed from the envelopes without the envelopes' having to be removed from the file.

Contents

Under the tab containing the contract, insert *all* pages of the contract, including any locally generated sets of special clauses or provisions.

Note that the Postal Service Board of Contract Appeals requires the inclusion only of pertinent specifications, modifications, plans, and drawings.

List each document, along with a brief description of it, in an appeal file index. In multivolume files, the index should indicate the division among volumes. Place the entire index (for all volumes) in each volume.

When including photographs, show date taken and by whom.

Do include copies of all relevant correspondence that is not privileged (if there is any question as to whether correspondence is privileged, consult assigned counsel). Any correspondence with counsel should be considered privileged and should not be disclosed.

Do *not* include in-house correspondence and drawings prepared by in-house personnel (including Postal Service counsel) and consultants intended to assess the merits of the contractor's claim.

The Importance of Certification

Paragraph d.2 of Clause B-9, *Claims and Disputes*, outlines the simple requirements for a contractor certification of claims over \$50,000, as required by the Contract Disputes Act of 1978. Overlooking this important statutory requirement can make invalid both your contracting officer's decision and any appeal, necessitating a complete reissuance of all paperwork.

Documentation

When you forward the appeal file (21 days after appeal) through counsel to the Board, you should provide the Postal Service counsel with the following documents:

1. Two complete copies of the appeal file (one to be retained by counsel) and a third copy that does not contain the tabs that pertain to the contract documents;
2. Copies of all relevant correspondence;
3. The names, titles, addresses, and telephone numbers of all potential witnesses for the Postal Service who have information about the dispute, with a summary of their testimony, if available;
4. The names and titles of potential witnesses for the contractor, if known; and
5. Any additional information that would assist in understanding the case. (If there is any doubt as to whether the information is relevant, include it.)

II. Assembling an Appeal File When the Small Claims (Expedited) Procedure Applies

For appeals under this procedure (see PM 6.8.3.h), file contents need initially consist only of the following:

1. The complete contract,
2. The contracting officer's final decision, and
3. The contractor's claim letter or letters, if any.

Transmit this initial file directly to the Board within ten days of receiving the appeal. Transmit any other pertinent documentation as required under "Contents," PH 6.8.3-I, within 30 days unless the Board directs a shorter response time.

Provide Postal Service counsel with a copy of the forwarding memorandum that you transmitted to the Board, in addition to copies of all documents you transmitted.

III. Taking Post-Settlement Steps—For Settlements Prior to Board Decisions

1. Once an appeal has been settled between the parties prior to a Board decision, you must modify the contract. The modification should set forth:
 - The specific terms of the agreement,
 - The contract clauses under which the settlement was made,
 - The consideration that was determined to be equitable, and

- A statement by the contractor releasing the Postal Service from all liability arising from the matter.
2. Follow up with legal counsel to ensure that the appellant withdraws the appeal with prejudice (allowing the appeal to be dismissed and agreeing not to raise it again) by direct notice to the Board.
 3. Record the details and basis of the settlement in a memorandum of negotiation (see PM and PH 4.4.3). If Postal Service counsel effected the settlement, counsel should provide pertinent details to the contracting officer in order to fully document the administrative record.

IV. Implementing Board Decisions

Upon advice of Postal Service counsel that no appeal is planned, the contracting officer must implement Board decisions that conflict with current terms and conditions of the contract by modifying the contract. Cite the Board decision number as authority for the modification. Retain the authenticated copy of the Board decision in the contract file as backup for the modification.

6.9 Contract Termination

6.9.1 General

Formats for Termination Notices (6.9.1.d)

Several termination notices, telegraphic and in letter format, are provided at the end of PH 6.9 as samples for this procedure, as follows:

- Samples 1 through 4 provide formats for termination-for-convenience notices in different contractual circumstances.
- Samples 5 and 6 provide formats for termination-for-default notices.

Note that if you issue a termination notice as a telegram, you should follow up with a confirming letter—return receipt requested—as soon as possible.

6.9.2 Termination for Convenience

I. Settling Contracts Terminated for Convenience

Clause B-11, *Termination for Convenience*, for fixed-price contracts, and Clause B-12, *Termination for Convenience or Default*, for other types of contracts, give the Postal Service the unilateral right to cancel all or part of a contract when termination is in its interest, without liability for breach of contract damages. The Postal Service agrees to pay the contractor its costs up to the date of termination, plus a reasonable profit or fee for work done and preparations made on the terminated part of the contract. The purpose of the termination clauses is to effect a prompt, fair, and final settlement of claims, because delay can be costly to both parties.

A change in Postal Service needs is the most common reason for termination for convenience. Although the rights expressed in the clauses are extremely broad, they are not to be used to end a contract without liability unless circumstances have changed. If you enter into an apparent contractual obligation on behalf of the Postal Service at the time of award, you must justify abandoning it later or face a breach of contract suit.

The contracting officer should weigh the time and costs of a termination for convenience against the remaining costs of the contract. When the costs of ending the contract are likely to exceed those of finishing it, it may be more advantageous to allow it to run to completion.

The Role of the Contracting Officer

The termination notice starts the settlement and closeout process. During this process, you, the contracting officer, should act with one overriding objective in mind: to settle promptly and fairly with the prime contractor (and with subcontractors on rare occasions), by negotiation whenever possible. Achieving this objective requires an understanding of both the settlement process and the principles governing settlement agreements.

The contracting officer's duties are to:

1. Direct the prime contractor's actions, which are listed in PM 6.9.2.b.
2. Examine the prime contractor's settlement proposal and, when appropriate, those of the subcontractors.
3. Negotiate and enter into a settlement agreement with the contractor.
4. Settle the contractor's claim by unilateral determination in the event that negotiation is unsuccessful, or no settlement proposal is submitted.

This procedure delineates the stages of the settlement process and outlines the contracting officer's tasks at each stage. Major tasks are described in more detail in succeeding procedures.

Initial Termination Conference

Schedule an initial termination conference with the prime contractor and principal subcontractors as soon as possible after termination. This conference will set the tone for the entire settlement process. As the contracting officer, you have the opportunity to give directions, answer questions, and reach understandings which may preclude later conflicts and delays. Plan the agenda carefully, take detailed minutes, and follow up promptly on unresolved items.

1. Prepare and distribute in advance the agenda for the conference. Representatives of the prime contractor, principal subcontractors, the requiring activity, and the Financial Analysis Branch should attend. The participation of assigned counsel should be considered on a case-by-case basis. If the settlement is likely to involve a termination inventory, invite a representative from the Office of Materiel Management. Topics for the conference should include applicable items from the following list.
 - a. General principles governing the settlement of any termination claim, including the contractor's obligations under the termination clause of the contract.
 - b. Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information which would have been delivered had the contract been completed.
 - c. Status of any continuing work.
 - d. Contractor's obligation to terminate subcontracts, and general principles governing settlement of subcontractor claims.
 - e. Names of subcontractors involved and the respective dates on which termination notices were sent to them.
 - f. Contractor's methods for review and settlement of proposed subcontractor claims, and the name of the representative handling them.
 - g. Agreements for transfer of title and delivery of any materials required by the Postal Service.
 - h. General principles and procedures to be followed in the protection, preservation, and disposal of the contractor's and subcontractor's termination inventory, including preparation of inventory schedules.
 - i. Basis and form of settlement proposals.

- j. Accounting review of settlement proposals. The Financial Analysis Branch representative should attend the conference to ascertain the basis of the settlement proposal and the method to be used in costing the proposal, and to confirm the ability and willingness of the prime contractor to review subcontract settlements.

If the settlement proposal is likely to require auditing, the representative should also arrange for access to the contractor's books and records, determine the extent of the contractor's knowledge and experience in termination matters, and—in the case of a fixed-price contract—make a preliminary decision on whether the contractor will be able to submit a settlement proposal on an inventory basis.

- k. Any requirements for partial payments or partial settlement.
 - l. Tentative time schedule for negotiation of the settlement, including submission of settlement proposals, termination inventory schedules, and accounting information by the contractor and subcontractors.
 - m. Contractor's actions taken to minimize the adverse effects of termination on affected employees.
 - n. Contractor's obligation to provide accurate, complete, and current cost or pricing data, and to certify the claim if so directed by the contracting officer.
 - o. Other topics peculiar to the terminated contract or portion of the contract.
2. Open the termination case file and place in it a copy of the termination notice, the agenda for the conference, and a memorandum containing the conference minutes, open items, and follow-up actions. You may use a copy of this sample to check off items as you file them.
 3. If the contractor is willing to accept a no-cost settlement on a partial or complete termination, and the conditions in PM 6.9.1.c.2 are met, use the initial conference to conclude a no-cost settlement agreement. This situation often arises when a contract award is overturned based on a protest. Include a draft settlement agreement (several models are provided in Samples 1 through 9 for this procedure) in the agenda package for the contractor's review so that any questions or differences can be resolved at the conference.

The Settlement Proposal

Examine the proposal and inventory schedules submitted by the prime contractor and reach a decision on a fair and reasonable price for negotiation or determination of the settlement. You should request an audit, a pricing analysis, or advice on approval of inventory schedules and disposition of property to assist you. However, because you bear the ultimate responsibility for settlement of the claim, you must thoroughly understand the issues raised by your legal and technical advisors and be prepared to defend any of their recommendations you adopt.

1. Do a preliminary review of the contractor's submission to identify possible problems requiring further investigation, and prepare a memorandum summarizing your findings, with a copy to the termination case file. The subjects and questions below are guidelines to alert you to common flaws in termination claims—they are not exhaustive.

- a. *Completeness.* Is the submission complete and in the form agreed to at the initial conference? Are cost or pricing data certified, if required? Is the contractor prepared to make further information available to the contracting officer or auditor if needed?
- b. *Basis for settlement.* PH 6.9.2-II and III, below, describe the various bases for fixed-price and non-fixed-price contract termination settlement proposals, and explain when each is to be used.

For *fixed-price contracts*, the contractor must prepare the proposal on an inventory basis unless the contracting officer has approved another basis in advance. If the contractor has used a basis other than that approved at the initial conference, has the original basis been shown to be impractical or productive of undue delays in settlement? Are all costs itemized in the appropriate categories? Has the contractor included an allowance for profit or adjustment for loss, and is it in accordance with Clause B-11 of the contract?

For *non-fixed-price contracts*, the Postal Service allows the contractor to voucher out all or part of remaining costs. The settlement agreement may involve a fee adjustment only, or some combination of unvouchered costs and a fee adjustment. If the contractor proposes that costs as well as fees be subject to negotiation, you may need a pricing analysis or an audit to establish a fair price for settlement. Which settlement method is in the interest of the Postal Service? Is the proposed fee adjustment consistent with Clause B-12 of the contract?

- c. *Cost principles.* The cost principles in PM 5.2 and accompanying procedures apply to pricing settlement agreements as well as contracts. In your preliminary review of the settlement proposal, look at the contractor's claimed costs in terms of three concepts: allowability, reasonableness, and allocability, as defined in PM 5.2.3 and 5.2.5. Note any obviously unallowable, unreasonable, or improperly allocated costs.

Certain costs and cost categories receive special treatment in pricing termination claims. Use PM 5.2.6 in assessing their allowability and reasonableness.

Affirmative answers to any of the following questions are warning signals that should prompt you to investigate further. If the proposal is to be audited, bring the questionable items to the auditor's attention, as they will influence the scope and level of detail of the audit.

- (1) Do overhead and administrative expenses or rates differ from those used in the past on this contract?
 - (2) Does the proposal include costs or cost categories that have been questioned or disallowed in previous audits?
 - (3) Does the proposal contain substantial amounts for nonrecurring or other unusual costs?
 - (4) Are there apparent procedural deviations between the pricing of the completed work under the contract and the termination claim?
 - (5) Are there inconsistencies in the pricing of the termination claim?
- d. *Termination inventory.* Settlement proposals must be supported by inventory schedules describing the contractor's and subcontractor's termination inventory.

Settlements prepared on an inventory basis require the most detailed schedules. Reviewing, auditing, and verifying the inventory items are major tasks in this kind of settlement. PH 6.9.2-IV, below, defines termination inventory, discusses required schedules, and gives instructions on disposition of the inventory items.

Examine the schedules submitted for warning signals warranting further investigation, and bring questionable items to the auditor's attention.

- (1) Do the inventory schedules include any items (including work in process and finished components) usable by the contractor on other work without loss of value, or returnable to the supplier?
 - (2) Are the quantities or unit costs shown on the schedules unusual or inconsistent with the contractor's past patterns?
 - (3) Do the costs shown for raw materials, metals, and purchased parts and supplies include labor or manufacturing overhead costs?
 - (4) Has the contractor improperly classified raw materials or purchased parts and supplies as work in process or finished components because of the greater profit allowed on these categories?
 - (5) Are prices shown for work in process and finished components based on actual cost or some statistical figure not supported by general ledger accounts?
 - (6) Has the contractor included finished products which the Postal Service has already rejected?
- e. *Subcontractor settlements.* The prime contractor's settlement proposal will ordinarily contain an amount for settling and paying claims arising from subcontract termination. The reasonableness of a contractor's settlement with a subcontractor should be measured by comparing the amount claimed with the amount the Postal Service would offer if it were to settle directly with the subcontractor.

In rare cases, the contracting officer may determine that it is in the interest of the Postal Service to settle directly with a subcontractor, generally to prevent a delay in settlement with the contractor. Treat the subcontractor's settlement proposal exactly like the contractor's, applying to it the same principles and tests.

2. Based on your preliminary review, request an audit or a pricing analysis as needed. Forward the settlement proposal and inventory schedules, if any, with a copy of the memorandum summarizing your findings, to the appropriate office. Put a copy of your request and the report you receive in response in the termination case file.
 - a. *Request for audit.* All settlement proposals of \$50,000 or more must be referred to the Audits Division of the Inspection Service for examination and recommendation. The amount of the proposal is the total claim less amounts payable for completed items or work at the contract price, and for the settlement of subcontractor claims. Credits for disposal of termination inventory or for advance or partial payments are *not* deducted in computing the proposal amount.

Settlement proposals of less than \$50,000 may be referred for audit if the contracting officer judges that the issues raised in the preliminary review warrant

extensive examination of the contractor's accounting procedures, books, and records. Weigh the delay and expense of an audit against the possible savings to the Postal Service when deciding whether to request an audit of a smaller proposal.

The auditor first appraises the contractor's accounting and termination policies, procedures, and internal controls to determine whether the costs claimed in the settlement proposal are generally consistent with them. The initial evaluation also includes review of underlying contract data, such as the bid proposal, cost estimates, bills of material, production schedules and records, shipping documents, purchase orders, and cost and profit forecasts as necessary. The auditor then prepares an audit program according to:

- (1) The amount of the proposal.
- (2) The basis on which it was prepared.
- (3) The condition of the contractor's books and records.
- (4) Previous experience with the contractor.
- (5) The effectiveness of the contractor's internal management and control system.
- (6) Issues raised by the contracting officer.
- (7) The provisions of the termination clauses in the contract.

The auditor's report contains all facts and findings that may significantly affect the settlement price, and may include information not submitted by the contractor. The auditor also comments on the accuracy, currency, and completeness of the contractor's data, and the effect of any errors or omissions on price. All recommendations made by the auditor are advisory.

- b. *Request for pricing analysis.* For most settlement proposals under \$50,000, analysis of the contractor's pricing procedures and verification of the accuracy, currency, and completeness of the claim will provide enough information for the contracting officer to establish a price objective for settlement. Request a pricing analysis from the Financial Analysis Branch. (Cost analysis is performed only if price data are unavailable or inapplicable to the settlement.) You will receive an advisory report commenting on whether the contractor's claim is fairly and reasonably priced, and recommendations on repricing if appropriate.
3. Arrange for technical evaluation of the termination inventory concurrently with the audit or pricing analysis. The Office of Materiel Management is responsible for verifying the physical quantity, quality, and usability of the inventory, and preparing an informational report for the contracting officer's use. The inventory verification report:
 - a. Confirms the existence of the inventory claimed by the contractor or subcontractor.
 - b. Evaluates its allocability to the terminated contract or contract portion.
 - c. Assesses the reasonableness of the items included in terms of the stage of contract work, production lead times, availability, delivery schedules, and similar factors.

- d. Identifies any common items, work in process, or finished components usable by the contractor on other work without loss of value, which should be excluded from the termination inventory.

Provide the auditor with a copy of the inventory verification report as soon as possible. It affects the scope of the audit—its absence may delay the audit report. The pricing analyst may also find it useful. Place a copy in the termination case file.

Negotiating the Settlement Agreement

The process of negotiating a settlement agreement is similar to that of negotiating a contract. Use the instructions in PM 4.4 and the following discussion to guide you through it.

1. Establish a pricing objective that is fair and reasonable. Use your own findings, the audit report or pricing analysis, the inventory verification report, and other pertinent information. For each proposed revision in the claim, document:
 - a. The contractor's proposal.
 - b. The Postal Service's revision.
 - c. The justification for the change. (Why is it fairer and more reasonable than the original proposal?)
 - d. The sources of data or information upon which you relied in reaching your decision.
 - e. Data or information submitted by the contractor which you rejected in your evaluation.
2. Schedule one or more negotiation sessions with the prime contractor. A representative of the Office of the General Counsel should be present throughout negotiations, but limit the attendance of other Postal Service employees to those needed to provide technical information. Call them in at appropriate points in the negotiations, and excuse them as soon as they are through. Keep all discussions and written materials confidential. The information you are using and the issues you raise are extremely sensitive, and careless leaks could jeopardize the contractor's competitive position in its industry as well as the success of the negotiations.

Checklists 1 through 3 for PH 4.4.2, Preparing for Negotiation Sessions, may be helpful in planning the agenda and conducting the meetings.

3. Once you reach agreement with the contractor, prepare a negotiation memorandum describing the contractor's original settlement proposal, the Postal Service's proposed revisions, and the negotiation results, addressing the issues outlined in PH 4.4.3 (with appropriate modifications). This memorandum will serve as the basis for review and approval of the settlement and for preparation of the agreement. A copy should be placed in the termination case file.

If the contractor and the Postal Service reach a *partial settlement*, include a separate section in the memorandum covering items not included in the settlement (usually a subcontractor settlement proposal) and the rights reserved by the parties with respect to those items.

Settlement by Determination

If you and the contractor cannot agree on a settlement, you must issue a unilateral determination of the amount of the settlement, computed as the applicable termination clause (B-11 or B-12) specifies. If the contractor fails to submit a settlement proposal within the period stipulated in the termination clause of the contract, and does not request an extension, you may either elect to settle by determination or act on a late proposal. You should choose the method which will result in the speediest final settlement.

1. Use the guidelines for allowable costs and deductions in the termination clause as a basis for preparing the determination. If the contractor failed to submit a proposal, you may request an audit, a pricing analysis, an inventory verification report, or other technical assistance as needed. Keep copies of all documents relating to the determination in the termination case file.
2. Notify the contractor by certified mail (return receipt requested) of the estimated amount due, if any, and require submission of written evidence supporting or refuting the estimate by a certain date. The date should be no sooner than 15 calendar days after receipt of the notice.
3. The contractor must establish, to your satisfaction, that the estimated amount of the settlement is incorrect. The evidence submitted may include vouchers, verified transcripts of ledgers and journals, audit reports, affidavits, and any other pertinent data or records. You may specify in the notice what documents or data you require.
4. Prepare the determination in the form of a settlement proposal, with supporting inventory schedules, analyses, and information as necessary.
5. Transmit a copy of the determination to the contractor by certified mail, and place a copy in the termination case file. In the transmittal letter, inform the contractor whether it has a right of review of the determination under the *Claims and Disputes* clause of the contract. If you are settling the claim by determination because of failure to reach a negotiated settlement, the contractor has the right of review in all cases. If the contractor failed to submit a timely settlement proposal for a non-fixed-price contract, the contracting officer's determination is final. However, you may treat failure to submit a settlement proposal for a fixed-price contract more leniently, and grant the right of review if circumstances warrant.

Executing the Settlement Agreement or Determination

Draft the settlement agreement or final determination. (Settlement agreement formats suitable for a variety of circumstances are provided in Samples 1 through 9 for this procedure.) Before the settlement agreement is executed, check the following items, with appropriate legal or technical assistance, to make sure that the Postal Service's interest is protected.

1. Compute the sum of all unliquidated advance or other payments applicable to the terminated portion of the contract, any set-offs or counterclaims which the Postal Service has against the contractor, and property disposal credits or proceeds. Subtract this amount from the gross amount of the settlement. Is the result equal to the amount shown as payable to the contractor in the agreement?
2. Review the agreement's proposed reservation of rights and liabilities with respect to patents, data rights, royalties, guarantees, and Postal Service property stored by the contractor. Are there any rights and liabilities not normally covered for which a

provision should be inserted in the agreement? Are there any rights the Postal Service may wish to assert after closeout which should be preserved in the agreement (for instance, rights to a state tax refund due the contractor)?

3. Check the disposition of the termination inventory. Has the contractor properly accounted for any Postal Service property? If not, should the agreement reserve rights with respect to that property, or make a deduction from the amount otherwise payable to the contractor?

Notify the Postal Data Center to make payment to the contractor when the agreement is executed.

II. Settlement Proposals for Fixed-Price Contracts

This procedure applies to all types of fixed-price contracts, including indefinite-delivery contracts, described in PM 5.1.3 and 5.1.5.

You may find it useful to transfer the information in the contractor's worksheets, and supporting inventory and accounting data schedules, to a series of spreadsheets—paper or electronic—as you examine and revise the proposal. (Or request that the contractor provide the information in electronic format when feasible.)

General Requirements

1. *Level of detail.* Settlement proposals must be in reasonable detail, supported by adequate accounting data. The contracting officer must determine what is "reasonable" and "adequate" for evaluation of the claim and negotiation of the settlement. Recognize that the accounting records supporting a fixed-price contract may not be as detailed as those for a cost-reimbursement-type contract, because the contractor was not being paid on the basis of costs incurred. No contractor may be required to maintain an elaborate accounting system in anticipation of termination.
2. *Basis of costs.* The contractor may base its claim on actual, standard (with appropriate adjustments), or average costs. Use of actual costs is preferable, but all three bases are acceptable, provided costs are determined according to generally accepted accounting principles consistently followed by the contractor. The contracting officer may approve a method for estimating costs in advance of submission of the proposal if the contractor cannot obtain actual, standard, or average costs.
3. *Settlement basis.* At or soon after the initial termination conference, the contracting officer must decide whether the proposal is to be submitted on an inventory basis or a total cost basis. The Postal Service prefers use of the inventory basis when feasible, because it ties costs and profit claimed by the contractor directly to the products or services specified in the terminated contract or contract portion. It also limits the claim to the residual items resulting from termination. These bases are described in more detail below.
4. *Equitable adjustments.* Every settlement proposal for a terminated fixed-price contract must contain either an allowance for profit or an adjustment for loss. If the termination is partial, the contractor must also request an equitable adjustment in unit prices specified in the contract for the continuing portion, but should submit that proposal separately. It is a contract modification rather than part of the termination settlement. These topics are also discussed below.

5. *Limit on settlement.* Clause B-11 limits the maximum settlement amount to the total contract price less the price of the continuing portion, exclusive of settlement costs. This limitation applies whether the settlement is by negotiation or determination.

The Inventory Basis

On the inventory basis, the contractor may claim only costs allocable to the terminated portion of the contract, adjusted for profit or loss, and settlement expenses (including subcontractor claims). Generally, allocable costs are limited to the costs of the termination inventory—items the contractor cannot reuse, sell, or return to suppliers without loss—and charges such as start-up or engineering costs related to the terminated work. Each of the following costs should be a separate line item in the settlement proposal:

1. Metals.
2. Raw materials.
3. Purchased parts and supplies.
4. Finished components.
5. Work in process.
6. Special tools and equipment.
7. Miscellaneous inventory.
8. Other charges (engineering costs, initial or start-up costs).
9. General and administrative expenses (indirect costs).
10. Subtotal (items 1 through 9).
11. Profit or loss, figured on the subtotal of items 1 through 9.

Line items 1 through 7 should be valued at purchase or production price, and must be supported by appropriate inventory schedules. (See PH 6.9.2-IV, below.) Overhead expenses must conform to PM 5.2.2. The remaining line items are:

12. Settlements with subcontractors.
13. Total (not to exceed the Clause B-11 limitation).
14. Settlement expenses.
15. Acceptable finished products (completed but not delivered), valued at the contract price.
16. Gross proposed settlement (total of items 1 through 13).
17. Deduction for property disposal and other credits (known at the time of proposal submission).
18. Net proposed settlement.
19. Deduction for advance, progress, or partial payments.
20. Net payment requested by the contractor.

If the amount of the proposal is \$50,000 or more, the contractor must show each cost category (raw materials, work in process, and so forth) as a separate line item, supported by appropriate

inventory schedules and a schedule of accounting data. Proposals of less than \$50,000 may be submitted in a less detailed form.

The Total Cost Basis

When use of the inventory basis is infeasible or will delay settlement, the contracting officer should direct the contractor to use the total cost basis for proposal preparation. This situation may arise when:

1. The contractor has not started production or provision of services, and costs incurred up to the date of termination are for planning, setting up equipment, recruiting and hiring, and similar "get ready" expenses.
2. The contractor's accounting system does not permit the auditor or the pricing analyst to establish a unit cost for work in process and finished products.
3. The contract itself does not specify unit prices.
4. A letter contract is completely terminated.
5. A construction or lump-sum professional services contract is completely terminated.

A settlement proposal prepared on a total cost basis must show *all* costs up to the date of termination, not just those associated with the terminated portion of the contract. It includes subcontractor settlement costs and settlement expenses. If the termination is partial, the contractor submits its proposal after the continuing work under the contract is completed.

The line items for cost are fewer and broader than those required for an inventory-based proposal. They are:

1. Direct material, for which supporting inventory showing *all* inventory associated with the contract are required.
2. Direct labor.
3. Manufacturing overhead.
4. Special tools and equipment (which also requires a supporting inventory schedule).
5. General and administrative expenses (indirect costs).
6. Subtotal (items 1 through 5).
7. Profit or loss, figured on the subtotal of items 1 through 5.
8. Deduction for finished product invoiced or to be invoiced (omit for a completely terminated construction or lump-sum professional services contract).
9. Settlement expenses.
10. Settlements with subcontractors.
11. Gross proposed settlement (total of items 1 through 10).
12. Deduction for property disposal and other credits (known at the time of proposal submission).
13. Net proposed settlement.
14. Deduction for advance, progress, or partial payments.
15. Net payment requested by the contractor.

Proposals of less than \$50,000 may be submitted in a less detailed form.

Allowance for Profit/Adjustment for Loss

Under the termination clause, the contractor is entitled only to profits on work done or preparations made. It may not claim "anticipatory profits" on the terminated portion of the contract, or profit on settlement expenses and settlements with subcontractors.

You must consider technical as well as financial factors in evaluating the allowance for profit. The best guideline is the rate of profit which the contractor would have earned had the contract been completed. If the contract is well under way at the time of termination, you may be able to accurately determine this amount. You should also consider these factors:

1. The extent and difficulty of the work completed by the contractor, compared with the total work required under the contract.
2. The amount of engineering work, production scheduling, planning, technical study and supervision, and other necessary services.
3. The contractor's efficiency at attaining expected levels of quantity and quality in production or provision of services, reducing costs, using resources (materials, facilities, and labor) economically, and disposing of termination inventory.
4. The amount and source of the contractor's capital, and the amount of risk it assumed.
5. The contractor's cooperation with the Postal Service and other contractors in supplying technical assistance, and the degree of innovation shown.
6. The source and nature of the materials used by the contractor, and the complexity of its manufacturing or service technology.
7. The rate of profit both parties contemplated at the time of contract negotiation.
8. The character and difficulty of subcontracting, including the contractor's general management of the subcontracting process and its efforts to negotiate settlements with subcontractors.

When it appears that the contractor would have suffered a loss if a terminated contract had been completed, allow no claim for profit and reduce the settlement by the estimated amount of the loss on the uncompleted work. To calculate this amount:

1. Estimate the cost to complete the contract, taking into account the expected efficiencies in production or provision of services (that is, where the contractor is on the "learning curve").
2. Find the *rate of loss*.
 - a. *Inventory basis*. Divide the contract price by the sum of the costs incurred before termination and the estimated cost to complete the contract.
 - b. *Total cost basis*. Divide the contract price by the sum of the gross settlement amount (agreed to or determined), less settlement expenses, and the estimated cost to complete the contract.
3. Reduce the settlement by the appropriate amount.
 - a. *Inventory basis*. Deduct from the gross settlement amount the contract price for acceptable finished products and settlement expenses. Multiply the remainder

by the rate of loss calculated in 2a. The new gross settlement amount must not exceed this figure.

- b. *Total cost basis.* Deduct from the gross settlement amount the settlement expenses. Multiply the remainder by the rate of loss calculated in 2b. The new gross settlement amount must not exceed this figure.

Partial Termination

When a fixed-price contract is partially terminated, the contractor must request in writing an equitable adjustment of unit prices for continuing work. The adjustment you negotiate should reflect the change in the contractor's unit costs resulting from the reduced volume of work, and should be treated as a contract modification. (See PM 6.5.) No part of any unit price increase should appear in the termination settlement.

III. Settlement Proposals for Other Types of Contracts

This procedure applies to all types of non-fixed-price contracts, including cost-reimbursement, time-and-materials, and labor-hour contracts, described in PM 5.1.4 and 5.1.6.

You may find it useful to transfer the information in the contractor's worksheets and supporting schedules to a series of spreadsheets—paper or electronic—as you examine and revise the proposal. (Or obtain the information from the contractor in electronic format.)

General Requirements

Settling cost-reimbursement and similar types of contracts is simple, because the contractor has already been reimbursed for all allocable, reasonable, and allowable costs claimed up to the date of termination. The form of the settlement proposal is similar to that for a settlement based on total cost, except that the contractor claims a fee rather than an allowance for profit or loss. The required level of detail and the acceptable bases of cost are the same as for fixed-price contract settlement proposals.

The contractor does have several options for claiming its costs and fee, depending on whether the contract is partially or completely terminated.

Complete Termination

When a non-fixed-price contract is completely terminated, the contractor may choose to limit the settlement proposal to a claim for the contract fee, and to voucher out all costs incurred both before and after termination, including settlement expenses and settlements with subcontractors. It may submit a settlement proposal immediately, consisting of all unvouchered costs and the fee. Or it may discontinue vouchering at any time up to 180 days after the date of termination—the deadline for submitting the settlement proposal—and claim all remaining unvouchered cost and the fee.

During the settlement process, you should:

1. Reach an agreement with the contractor at the initial termination conference on which costs, if any, will be included in the settlement proposal and which will be claimed on vouchers. Your objective should be to quickly negotiate a final settlement; the contractor will want to be paid as soon as possible.

2. Examine all costs, whether they are submitted on vouchers or in the proposal, for allocability, reasonableness, and allowability. Verify that the settlement proposal does not include any costs already reimbursed. If the settlement proposal is for \$50,000 or more, request an audit of both the proposal and all vouchers under the contract, so that any errors in previous payments can be corrected in the final settlement.
3. Separate the adjustment of overhead costs for the final period of the contract if this item threatens to delay settlement. Execute a partial settlement, reserving the right to negotiate adjusted rates at a later time. Request a Postal Service auditor's advice on a fair overhead rate, but avoid using an outside auditor even if the contractor requests it. Using the Defense Contracting Audit Service or a similar agency will delay final settlement even longer.
4. Adjust the claim for the contract fee, if any, as provided in the contract. The adjusted fee should reflect extent and difficulty of the work actually performed under the contract before termination. Use percentage of completion of the contract as a guide, but consider also:
 - a. The amount of engineering work, production scheduling, planning, technical study and supervision, and other necessary services.
 - b. The character and difficulty of subcontracting, including the contractor's general management of the subcontracting process and its efforts to negotiate settlements with subcontractors.

Partial Termination

The settlement of a partially terminated non-fixed-price contract is limited to the adjustment of the contract fee and a reduction in the cost estimate or ceiling (if any). Adjust the fee to reflect the extent and difficulty of work performed under the terminated portion of the contract, taking into account the factors listed above.

IV. The Termination Inventory

When a contract is completely or partially terminated, the prime contractor and subcontractors are often left with property acquired for use on contract work, which they may dispose of in the various ways discussed below. There are usually some items which they must dispose of at a loss, and for these losses they may claim compensation in their respective settlement proposals. The contracting officer, with the assistance of the Office of Materiel Management and the auditor (when appropriate), must ensure that:

1. The costs of all items included in the termination inventory are properly allocable to the terminated contract or portion of the contract.
2. Plans for disposal of the inventory preserve or recover as much of its value as practical, and are fair and reasonable from the contractor's perspective.

Termination inventory means materials, facilities, tooling, equipment, machinery, and other property, except for items reasonably usable without loss of value on the contractor's other work, the costs of which are properly allocable to the terminated contract or portion of the contract. It specifically includes:

1. Property furnished by the Postal Service.

2. Special tooling and equipment for which the contractor can show evidence of loss of useful value.

Inventory Schedules

Worksheets and instructions to contractors on preparing inventory schedules are at the end of this section of procedures. The level of detail required varies with the type of settlement. Proposals prepared on an inventory basis require the most detailed schedules, because the costs of the termination inventory must be proven allocable to the specific products or services included in the terminated contract or portion of the contract.

If you terminate a contract and settlement is likely to involve a claim for termination inventory costs, you should start the process of identifying and disposing of contractor or subcontractor inventory as soon as possible after notice of termination, to avoid settlement delays.

1. At or before the initial termination conference, find out how soon the prime contractor can submit a set of schedules, and set the tentative timetable for settlement accordingly. Confirm that the contractor has written plans for the disposition of its inventory that are acceptable to the Office of Materiel Management.
2. Transmit the initial set of schedules to the Office of Materiel Management immediately upon receipt. Materiel Management reviews the schedules, accepts or modifies them, and conducts the inventory verification.
3. While you wait for the inventory verification report, review the schedules as discussed in PH 6.9.2-I, above, and note any questionable items.
4. Send the inventory verification report and results of your review to the auditor or pricing analyst for recommendations on allowable costs for settlement.

Subcontractor Termination Inventory

The prime contractor must review and approve the inventory schedules for its subcontractors' termination inventories and report their inventories for verification. It must follow the same policies and procedures as the contracting officer for the Postal Service. The contractor may acquire items in subcontractors' inventories or arrange for their disposal as directed by the contracting officer.

Disposal of Inventory

The terminated contract may contain provisions covering the disposal of termination inventory, in which case you need only make sure that the provisions are correctly interpreted and followed. In the absence of specific provisions, the contractor must use the following methods for disposal of property acquired by it or a subcontractor, in the order shown:

1. Purchase or retention at cost, by the prime contractor or subcontractor.
2. Return to suppliers.
3. Use within the Postal Service (requires screening and approval by the Office of Materiel Management).
4. Donation to eligible recipients.
5. Sale (including purchase or retention at less than cost by the prime contractor or subcontractor).

6. Donation to public bodies in lieu of abandonment.
7. Abandonment or destruction.

6.9.3 Termination for Default

I. Conditions Under Which the Postal Service Can Lose Its Right to Terminate

A Material Breach of Contract

The contractor is not bound to proceed with contract performance if the Postal Service has committed a material breach of contract—that is, has significantly failed to abide by the contract terms and conditions. Failure of the Postal Service to pay several contractor invoices without clear justification would be an example of material breach. Taking actions in excess of those authorized by the contract is another type of material breach—for example, the issuance of a unilateral contract change that is outside the scope of the original contract.

The contractor may elect to waive a material breach by the Postal Service and continue performance—but, when it does so, it may notify the Postal Service that it reserves the right to seek damages for the breach.

A "Waiver" of the Right to Terminate

"Waiver" is the common, if confusing, term used to describe the conditions under which the Postal Service may lose its right to terminate. "Waiver" suggests that Postal Service employees may voluntarily relinquish the Postal Service's right to terminate, but that is *not* the case. Instead, the action or inaction of Postal employees vis-a-vis a contractor's delinquent delivery may cause the Postal Service to waive *involuntarily* its vested right to terminate under the *Termination for Default* clause, if both of the following conditions are present:

1. The Postal Service does not exercise its right to terminate within a reasonable time,
and
2. The contractor, to its detriment, relies on such forbearance by continuing with performance.

Because the time allowed for reasonable forbearance depends entirely upon the circumstances of each case, you should always issue a notice of forbearance (see PH 6.2.5) when you intend to temporarily forbear late delivery or performance.

II. Reinstating a Defaulted Contractor (6.9.3.a.4)

Reinstatement is an option in a situation in which a contractor has been terminated for default, but you find that either (a) the condition on which the default was based has changed (for example, a contractor who was not progressing because of a poor financial situation has found financial backing), or (b) repurchase alternatives are not as good as you had anticipated.

If you decide to reinstate the contractor, you should normally get some consideration—money, time, or some other tangible benefit for the Postal Service. An exception is if the default was based on erroneous information. Settling an erroneous termination for default

directly with the contractor may be less costly in time and money than requiring the contractor to pursue its legal remedies.

The following steps should be taken in reinstating a contractor:

1. Consult with your Postal Service team of experts (assigned counsel, requirements office, quality assurance personnel, technical office personnel) to get their recommendations.
2. Negotiate terms of reinstatement with the terminated contractor. You can ask for a proposal for review by your Postal Service team of experts. The proposal should be only as detailed as necessary to satisfy you that after reinstatement, previously deficient areas will be performed satisfactorily. For instance, if quality control was a problem, ask for a new quality control plan.
3. If agreement is reached, provide the contract file with documentation justifying the reinstatement and the negotiated terms of agreement.
4. Send a supplemental agreement to the contractor incorporating negotiated terms and conditions. Incorporate a proposal if it contains significant new features, such as a quality control plan that the contractor pledges to follow. Be sure to include a statement that releases the Postal Service from claims, such as, "The contractor hereby releases the Postal Service from any and all liability under this contract for issuance of the Notice of Termination dated _____, and the subsequent rescission of that notice dated _____."
5. After you have received the supplemental agreement signed by the contractor, issue the bilateral contract modification

and simultaneously

issue a letter amending the notice of termination and reinstating the contractor. See the sample for this procedure, "Letter Amending a Notice of Termination for Default."

Sample 1 for PH 6.9.1, Formats for Termination Notices
Telegraphic Notice—Complete Termination for Convenience

**TELEGRAPHIC NOTICE—COMPLETE TERMINATION FOR
CONVENIENCE**

When you are completely terminating a supply contract for convenience, you can use the following telegraphic notice. Make appropriate modifications for other than supply contracts.

DATE
XYZ Corporation
Our Town, NY XXXXX-XXXX

Contract No. _____ is completely terminated under Clause _____, effective _____ [insert "immediately" or "_____, 19____," or "as soon as you have delivered, including prior deliveries, the following items: list]. Immediately stop all work, terminate subcontracts, and place no further orders except to the extent [insert, if applicable, "necessary to complete items not terminated or"] that you or a subcontractor wish to retain and continue for your own account any work-in-process or other materials. Telegraph similar instructions to all affected subcontractors and suppliers. Detailed instruction will follow.

Jane Justice, Contracting Officer

cc: Assigned counsel
Surety (if any)
Requirements office
Quality Assurance office
Technical Support office

Sample 2 for PH 6.9.1, Formats for Termination Notices
Telegraphic Notice—Partial Termination for Convenience

**TELEGRAPHIC NOTICE—PARTIAL TERMINATION FOR
CONVENIENCE**

When you are completely terminating a supply contract for convenience, you can use the following telegraphic notice. Make appropriate modifications for other than supply contracts.

DATE

XYZ Corporation

Our Town, NY XXXXX-XXXX

Contract No. _____ is partially terminated under
Clause _____, effective _____ [insert
"immediately" or on "_____, 19____,]. Reduce
items to be delivered as follows: [insert instructions].
Immediately stop all work, terminate subcontracts, and place no
further orders except to the extent that is necessary to perform
the portion not terminated or that you or a subcontractor wish to
retain and continue for your account any work-in-process or other
materials. Telegraph similar instructions to all affected
subcontractors and suppliers. Detailed instruction will follow.

Jane Justice, Contracting Officer

cc: Assigned counsel
Surety (if any)
Requirements office
Quality Assurance office
Technical Support office

Sample 3 for PH 6.9.1, Formats for Termination Notices

Letter Notice—Termination for Convenience When Telegraphic Notice Was Previously Issued

**LETTER NOTICE—TERMINATION FOR CONVENIENCE WHEN
TELEGRAPHIC NOTICE WAS PREVIOUSLY ISSUED**

When you are terminating a supply contract for convenience, you can use the following letter notice of termination as a follow-up to a telegraphic notice similar to Samples 1 and 2. Make appropriate modifications for other than supply contracts. See Sample 4 for a letter notice not preceded by a telegraphic notice.

Date

Mr. Head Honcho
XYZ Corporation
124 Main Street
Our Town, NY XXXXX-XXXX

Dear Mr. Honcho:

Regarding: Notice of Termination, Contract No. _____.

a. *Effective date of termination.* This confirms the Postal Service's telegram to you dated _____, 19____, terminating _____ [insert "completely" or "in part"] Contract No. _____ (referred to as "the contract") for the Postal Service's convenience under the clause entitled _____ [insert title of appropriate termination clause]. The termination is effective on the date and in the manner stated in the telegram.

b. *Cessation of work and notification to immediate subcontractors.* You shall take the following steps:

1. Stop all work, make no further shipments, and place no further orders relating to the contract, except for—

(a) The continued portion of the contract, if any;

(b) Work-in-process or other materials that you may wish to retain for your own account; or

(c) Work in process that the contracting officer authorizes you to continue (1) for safety precautions, (2) to clear or avoid damage to equipment, (3) to avoid immediate complete spoilage of work in process having a definite commercial value, or (4) to prevent any other undue loss to the Postal Service. (If you believe this authorization is necessary or advisable, immediately notify the contracting officer by telephone or personal conference and obtain instructions.)

2. Keep adequate records of your compliance with subparagraph 1 above, showing—

(a) The date you received the notice of termination,

(b) The effective date of the termination, and

(c) The extent of completion of performance on the effective date.

Sample 3 for PH 6.9.1, Formats for Termination Notices

Letter Notice—Termination for Convenience When Telegraphic Notice Was Previously Issued (continued)

3. Furnish notice of termination to each immediate subcontractor and supplier that will be affected by this termination. In the notice—

- (a) Specify your Postal Service contract number;
- (b) State whether the contract has been terminated completely or partially;
- (c) Provide instructions to stop all work, make no further shipments, place no further orders, terminate all subcontracts under the contract, subject to the exceptions in subparagraph 1 above;
- (d) Provide instructions to submit any settlement proposal promptly; and
- (e) Request that similar notices and instructions be given to its immediate subcontractors.

4. Notify the contracting officer of all pending legal proceedings that are based on subcontracts or purchase orders under the contract or in which a lien has been or may be placed against termination inventory to be reported to the Postal Service. Also, promptly notify the contracting officer of any such proceedings that are filed after receipt of this notice.

5. Take any other action required by the contracting officer or under the termination clause in the contract.

c. Termination inventory.

1. As instructed by the contracting officer, transfer title and deliver to the Postal Service all termination inventory of the following types or classes, including subcontractor termination inventory that you have the right to take: [insert proper identification or "None"].

2. To settle your proposal, it will be necessary to establish that all prime and subcontractor termination inventory has been properly accounted for.

d. Settlements with subcontractors. You remain liable to your subcontractors and suppliers for proposals arising because of the termination of their subcontracts or orders. You are requested to settle these settlement proposals as promptly as possible.

e. Completed end items.

1. Notify the contracting officer of the number of items completed under the contract and still on hand and arrange for their delivery or other disposal.

2. Invoice acceptable completed end items under the contract in the usual way and do not include them in the settlement proposal.

f. Patents. If required by the contract, promptly forward the following to the contracting officer:

Sample 3 for PH 6.9.1, Formats for Termination Notices

Letter Notice—Termination for Convenience When Telegraphic Notice Was Previously Issued (continued)

1. Disclosure of all inventions, discoveries, and patent applications made in the performance of the contract, and

2. Instruments of license or assignment on all inventions, discoveries, and patent applications made in the performance of the contract.

g. Employees affected.

1. If this termination, together with other outstanding termination, will necessitate a significant reduction in your work force, you are urged to—

(a) Promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that the Service can taken timely action in assisting displaced workers;

(b) Give affected employees maximum practical advance notice of the employment reduction and inform them of the facilities and services available to them through the local State Employment Service offices;

(c) Advise affected employees to file applications with the State Employment Service to qualify for unemployment insurance, if necessary;

(d) Inform officials of local unions having agreements with you of the impending reduction-in-force; and

(e) Inform the local Chamber of Commerce and other appropriate organizations that are prepared to offer practical assistance in finding employment for displaced workers of the impending reduction-in-force.

2. If practicable, urge subcontractors to take actions similar to those described in subparagraph 1(e) above.

h. Administrative. I will be forwarding (or "I am attaching to this notice . . .") a set of forms to expedite settlement and your final payment under this contract. Please bring to my immediate attention any matter not covered by this notice, and acknowledge receipt of this notice as provided below (or "as provided by the commercial carrier").

Jane Justice, Contracting Officer

cc: Assigned counsel
Surety (if any)
Requirements office
Quality Assurance office
Technical Support office

Sample 3 for PH 6.9.1, Formats for Termination Notices

Letter Notice—Termination for Convenience When Telegraphic Notice Was Previously Issued (continued)

ACKNOWLEDGMENT OF NOTICE

The undersigned acknowledges receipt of a signed copy of this notice on _____, 19____, and is returning two signed copies of this notice.

Name of Contractor: _____

By _____
(signature)

(typed or printed name)

(title)

Sample 4 for PH 6.9.1, Formats for Termination Notices

Letter Notice—Termination for Convenience When Telegraphic Notice Was Not Previously Issued

**LETTER NOTICE—TERMINATION FOR CONVENIENCE WHEN
TELEGRAPHIC NOTICE WAS NOT PREVIOUSLY ISSUED**

When you are terminating a supply contract for convenience and did not issue a telegraphic notice of termination, substitute the following paragraph a for paragraph a shown in Sample 3. Make appropriate modifications for other than supply contracts.

a. *Effective date of termination.* You are notified that Contract No. _____ (referred to as "the contract") is terminated _____ [insert "completely" or "in part"] for the Postal Service's convenience under the clause entitled _____ [insert title of appropriate termination clause]. The termination is effective [insert either "immediately upon receipt of this notice" or "on _____ 19 __, " or "as soon as you have delivered, including prior deliveries, the following items." (list)]. Items to be delivered are as follows: [insert instructions].

[See Sample 3 for additional paragraphs]

Sample 5 for PH 6.9.1, Formats for Termination Notices
Telegraphic or Letter Notice—Complete Termination for Default

**TELEGRAPHIC OR LETTER NOTICE—COMPLETE TERMINATION
FOR DEFAULT**

When you are completely terminating a fixed-price contract for default, you can use the following telegraphic notice. Make appropriate modifications for other than supply contracts and for partial terminations.

DATE

XYZ Corporation

Our Town, NY XXXXX-XXXX

Contract No. _____, dated _____, 19 __, is completely terminated under Clause B-13, *Termination for Default*, effective _____ [insert "immediately" or "____ 19 __,"] for the following reasons: [insert specific reasons on which default is based]. The Postal Service may repurchase the items being terminated under this contract and charge any excess costs of such repurchase costs to you. In addition to excess repurchase costs, the Postal Service reserves all rights and remedies provided by law or under this contract.

This is the final decision of the contracting officer as defined in Clause B-9 of your contract, *Claims and Disputes* (October 1987). You may appeal this decision to the Postal Service Board of Contract Appeals. If you decide to appeal, mail or otherwise furnish written notice (preferably in triplicate) to the contracting officer within 90 days from the date you receive this decision. Your notice should identify the contract by number, reference this decision, and indicate that an appeal is intended.

Instead of appealing to the Board of Contract Appeals, you may bring an action directly to the U.S. Claims Court within 12 months from the date you receive this decision.

Jane Justice, Contracting Officer

cc: Assigned counsel
 Surety (if any)
 Requirements office
 Quality Assurance office
 Technical Support office

Sample 6 for PH 6.9.1, Formats for Termination Notices
Telegraphic or Letter Notice—Partial Termination for Default

**TELEGRAPHIC OR LETTER NOTICE—PARTIAL TERMINATION FOR
DEFAULT**

When you are partially terminating a fixed-price supply contract for default, you can use the following letter notice. Make appropriate modifications for other than supply contracts and for complete terminations.

Date

Mr. Head Honcho
XYZ Corporation
124 Main Street
Our Town, NY XXXXX-XXXX

Dear Mr. Honcho:

That portion of Contract No. _____, dated _____ 19____, described in the contract schedule as Items 2, 4, and 6, is terminated under Clause B-13, *Termination for Default*, effective _____ [insert "immediately" or "_____, 19____,"] for the following reasons: [insert specific reasons on which default is based]. Immediately stop all work, terminate subcontracts relating to these items, and place no further orders for these items. This notice does not affect our right to proceed with the work specified in the contract schedule as Items 1, 3, and 5.

The Postal Service may repurchase the unacceptable or undelivered quantities of Items 2, 4, and 6 under this contract and charge any excess costs of such repurchase to you. In addition to excess repurchase costs, the Postal Service reserves all rights and remedies provided by law or under this contract.

This is the final decision of the contracting officer as defined in Clause B-9, *Claims and Disputes*. You may appeal this decision to the Postal Service Board of Contract Appeals. If you decide to appeal, mail or otherwise furnish written notice (preferably in triplicate) to the contracting officer within 90 days from the date you receive this decision. Your notice should identify the contract by number, reference this decision, and indicate that an appeal is intended.

Instead of appealing to the Board of Contract Appeals, you may bring an action directly to the U.S. Claims Court within 12 months from the date you receive this decision.

Jane Justice, Contracting Officer

cc: Assigned counsel
Surety (if any)
Requirements office
Quality Assurance office
Technical Support office

Sample 1 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Settlement Agreement Format for Complete Termination of Fixed-Price Contracts

**SETTLEMENT AGREEMENT FORMAT FOR COMPLETE TERMINATION
OF FIXED-PRICE CONTRACTS**

Include the following language, as appropriate, in your modification.

- a. This supplemental agreement settles the contractor's proposal resulting from the notice of termination dated _____.
- b. The parties agree to the following:
 1. The contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the contractor, sold to third parties, returned to suppliers, delivered to or stored for the Postal Service, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.
 2. The contractor certifies that each immediate subcontractor whose settlement proposal is included in the proposal settled by this agreement has furnished the contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Postal Service, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.
 3. The contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the contractor on its other work. The contractor further certifies that the contracting officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.
 4. The contractor transfers, conveys, and assigns to the Postal Service all the right, title, and interest, if any, that the contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.
 5. The contractor shall, within ten days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the contractor so elects, any amounts due and payable to the contractor by those subcontractors.

Sample 1 for PH 6.9.2-I, Settling Contracts Terminated for Convenience

Settlement Agreement Format for Complete Termination of Fixed-Price Contracts (continued)

6. (i) The contractor has received \$_____ for work and services performed, or items delivered, under the completed portion of the contract. The Postal Service confirms the right of the contractor, subject to paragraph (7) below, to retain this sum and agrees that this sum constitutes a portion of the total amount to which the contractor is entitled in settlement of the contract.

(ii) Further, the Postal Service agrees to pay to the contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$_____ [insert net amount of settlement], arrived at by deducting from the sum of \$_____ [for proposals on an inventory basis, insert gross amount of settlement; for proposals on a total cost basis, insert gross amount of settlement less amount shown in paragraph (6)(i) above] (A) the amount of \$_____ for all unliquidated partial or progress payments previously made to the contractor or its assignee and all unliquidated advance payments (with any interest) and (B) the amount of \$_____ for all applicable property disposal credits [insert if appropriate, "and (C) the amount of \$_____ for all other amounts due the Postal Service under this contract, except as provided in paragraph (7) below"].

(iii) The net settlement of \$_____ in subdivision (ii) above, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the contractor for the complete termination of the contract and of all other demands and liabilities of the contractor and the Postal Service under the contract except as provided in paragraph (7) below.

7. Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated. The suggested language may be changed at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that is not applicable and add any additional exceptions or reservations required.]

(i) All rights and liabilities, if any, of the parties, as to matters covered by and regulations made implementing 10 U.S.C. 2382, as amended, and any other renegotiation authority.

(ii) All rights of the Postal Service to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders.

Sample 1 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Settlement Agreement Format for Complete Termination of Fixed-Price Contracts (continued)

(iv) All rights and liabilities, if any, of the parties under those applicable contract clauses relating to labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit."

(v) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(vi) All rights and liabilities of the parties concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Postal Service by the contractor under the contract or this agreement.

(vii) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Postal Service.

(viii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the contractor of Postal-owned property remaining in the contractor's custody.

(ix) All rights and liabilities of the parties relating to Postal Service property furnished to the contractor for the performance of this contract.

(x) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(xi) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

**Sample 2 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Settlement Agreement Format for Partial Termination of Fixed-Price Contracts**

**SETTLEMENT AGREEMENT FORMAT FOR PARTIAL TERMINATION
OF FIXED-PRICE CONTRACTS**

Include the following language, as appropriate, in your modification.

- a. This supplemental agreement settles the contractor's proposal resulting from the notice of termination dated _____.
- b. The parties agree to the following:
 1. The terminated portion of the contract is as follows: [specify the terminated portion clearly as to (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding].
 2. The contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the contractor, sold to third parties, returned to suppliers, delivered to or stored for the Postal Service, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.
 3. The contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Postal Service, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.
 4. The contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of the settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the contractor on its other work. The contractor further certifies that the contracting officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.
 5. The contractor transfers, conveys, and assigns to the Postal Service all the right, title, and interest, if any, that the contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.
 6. The contractor shall, within ten days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective

Sample 2 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Settlement Agreement Format for Partial Termination of Fixed-Price Contracts (continued)

assignees) the amounts to which they are entitled, after deducting any prior payments and, if the contractor so elects, any amounts due and payable to the contractor by those subcontractors.

7. (i) The Postal Service agrees to pay to the contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$ _____ [insert net amount of settlement] arrived at by deducting from \$ _____ [insert gross amount of settlement] (A) the amount of \$ _____ for all unliquidated partial or progress payments previously made to the contractor or its assignee and all unliquidated advance payments (with any interest) applicable to the terminated portion of the contract and (B) the amount of \$ _____ for all applicable property disposal credits.
- (ii) The net settlement of \$ _____ in paragraph (i) above, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the contractor for the terminated portion of the contract, except as provided in subparagraph (8) below.
- (iii) Upon payment of the net settlement of \$ _____, all obligations of the Contractor to perform further work or services to make further deliveries under the terminated portion of the contract and all obligations of the Postal Service to make further payments or carry out other undertakings concerning the terminated portion of the contract shall cease, provided that nothing in this agreement shall impair or affect any covenants, terms, or conditions of the contract relating to the completed or continued portion of this contract.
8. Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated. You may change the suggested language of the excepted items on the list at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that is not applicable, and add any additional exceptions or reservations required.]

 - (i) All rights and liabilities, if any, of the parties, as to matters covered by and regulations made implementing 10 U.S.C. 2382, as amended, and any other renegotiation authority.

Sample 2 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Settlement Agreement Format for Partial Termination of Fixed-Price Contracts (continued)

(ii) All rights of the Postal Service to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders.

(iv) All rights and liabilities, if any, of the parties under those applicable contract clauses relating to labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit."

(v) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(vi) All rights and liabilities of the parties concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Postal Service by the contractor under the contract or this agreement.

(vii) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Postal Service.

(viii) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

Sample 3 for PH 6.9.2-I, Settling Contracts Terminated for Convenience**Settlement Agreement Format for Complete Termination of Cost-Reimbursement Contracts if Settlement Includes Costs****SETTLEMENT AGREEMENT FORMAT FOR COMPLETE TERMINATION
OF COST-REIMBURSEMENT CONTRACTS IF SETTLEMENT INCLUDES
COSTS**

Include the following language, as appropriate, in your modification.

- a. This supplemental agreement settles the settlement proposal resulting from the notice of termination dated _____.
- b. The parties agree to the following:
 1. The contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the contractor, sold to third parties, returned to suppliers, delivered to or stored for the Postal Service, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.
 2. The contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Postal Service, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.
 3. The contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the contractor on its other work. The contractor further certifies that the contracting officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.
 4. The contractor transfers, conveys, and assigns to the Postal Service all the right, title, and interest, if any, that the contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.
 5. The contractor shall, within ten days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the contractor so elects, any amounts due and payable to the contractor by those subcontractors.

Sample 3 for PH 6.9.2-I, Settling Contracts Terminated for Convenience

Settlement Agreement Format for Complete Termination of Cost-Reimbursement Contracts if Settlement Includes Costs (continued)

6. (i) The contractor has received \$_____ for work and services performed, or articles delivered, under the contract before the effective date of termination. The Postal Service confirms the right of the contractor, subject to paragraph (7) below, to retain this sum and agrees that this sum constitutes a portion of the total amount to which the contractor is entitled in complete and final settlement of the contract.

(ii) Further, the Postal Service agrees to pay to the contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$_____ [insert net amount of settlement], arrived at by deducting from the sum of \$_____ [insert gross amount of settlement less amount shown in paragraph (6)(i) above]

(A) the amount of \$_____ for all unliquidated partial or progress payments previously made to the contractor or its assignee and all unliquidated advance payments (with any interest), (B) the amount of \$_____ for all applicable property disposal credits [insert if appropriate, "and (C) the amount of \$_____ for all other amounts due the Postal Service under this contract, except as provided in paragraph (7) below"].

(iii) The net settlement of \$_____ in paragraph (ii) above, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the contractor for the complete termination of the contract and of all other demands and liabilities of the contractor and the Postal Service under the contract, except as provided in paragraph (7) below.

7. Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated. You may change the suggested language of the excepted items on the list at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.]

(i) All rights and liabilities, if any, of the parties, as to matters covered by and regulations made implementing 10 U.S.C. 2382, as amended, and any other renegotiation authority.

(ii) All rights of the Postal Service to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

Sample 3 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Settlement Agreement Format for Complete Termination of Cost-Reimbursement Contracts if Settlement Includes Costs (continued)

- (iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders.
- (iv) All rights and liabilities, if any, of the parties under those applicable contract clauses relating to labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit."
- (v) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.
- (vi) All rights and liabilities of the parties concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Postal Service by the contractor under the contract or this agreement.
- (vii) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Postal Service.
- (viii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the contractor of Postal-owned property remaining in the contractor's custody.
- (ix) All rights and liabilities of the parties relating to Postal Service property furnished to the contractor for the performance of this contract.
- (x) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.
- (xi) Unresolved demands or assertions by the contractor against the Postal Service for costs under General Accounting Office exceptions or other costs of the same nature that are excluded from the settlement without prejudice to the rights of either party, as follows: [insert amount and describe charges not waived].
- (xii) Claims by the contractor against the Postal Service when the contractor's rights of reimbursement are disputed, which are excluded without prejudice to the rights of either party as follows: [insert the amounts and describe the claims on which the contracting officer has made findings and has disallowed and on which the contractor has taken, or intends to take, timely appeal].
- (xiii) Unresolved demands or assertions by the contractor against the Postal Service that are unknown in amount and involve costs alleged to be reimbursable under the contract as follows: [insert the estimated amounts and describe the charges].

Sample 3 for PH 6.9.2-I, Settling Contracts Terminated for Convenience

Settlement Agreement Format for Complete Termination of Cost-Reimbursement Contracts if Settlement Includes Costs (continued)

(xiv) Unknown amounts alleged by the contractor against the Postal Service based upon responsibility of the contractor to third parties that involve costs reimbursable under the contract.

(xv) Debts due the Postal Service by the contractor that are based on refunds, rebates, credits, or other amounts not now known to the Postal Service, together with interest now due or that may become due the contractor from third parties, if the amounts arise out of transactions for which reimbursement has been made to the contractor under the contract. The contractor shall pay to the Postal Service, within 30 days after receipt, any of these amounts that become due from any third party or any other source. Interest at the rate established by the Secretary of the Treasury under 50 U.S.C. (App.) 1215(b)(2) shall accrue and shall be paid to the Postal Service on any amounts that remain unpaid after the 30-day period.

(xvi) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

Sample 4 for PH 6.9.2-I, Settling Contracts Terminated for Convenience

Settlement Agreement Format for Complete Termination of Cost-Reimbursement Contracts if Settlement is Limited to Fee

**SETTLEMENT AGREEMENT FORMAT FOR COMPLETE TERMINATION
OF COST-REIMBURSEMENT CONTRACTS IF SETTLEMENT IS LIMITED
TO FEE**

Include the following language, as appropriate, in your modification.

- a. This supplemental agreement settles the amount of fee due under the contract, terminated in its entirety by notice of termination dated _____.
- b. The parties agree to the following:
 1. The contractor has received \$ _____ on account of its fee under the contract before the effective date of termination.
 2. The Postal Service agrees to pay to the contractor or its assignee, upon presentation of a proper invoice or voucher, \$ _____ [insert net amount to be paid on account of fee]. This sum, with sums previously paid, constitutes payment in full and complete settlement of the amount due the contractor on account of its fee under the contract.

[Insert subparagraph (3) only if there are costs to be covered later by a separate settlement agreement.]

3. The contractor's allowable costs under the contract will be paid under the terms and conditions of the contract.
4. Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated. You may change the suggested language on the list at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.]

(i) All rights and liabilities, if any, of the parties, as to matters covered by and regulations made implementing 10 U.S.C. 2382, as amended, and any other renegotiation authority.

(ii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders.

(iii) All rights and liabilities, if any, of the parties under those applicable contract clauses relating to labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit."

Sample 4 for PH 6.9.2-I, Settling Contracts Terminated for Convenience

Settlement Agreement Format for Complete Termination of Cost-Reimbursement Contracts if Settlement is Limited to Fee (continued)

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Postal Service by the contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under agreements relating to the future care and disposition by the contractor of Postal-owned property remaining in the contractor's custody.

(vii) All rights and liabilities of the parties relating to Postal Service property furnished to, or acquired by, the contractor for the performance of the contract.

(viii) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(ix) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

Sample 5 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Settlement Agreement Format for Partial Termination of Cost-Reimbursement Contracts

**SETTLEMENT AGREEMENT FORMAT FOR PARTIAL TERMINATION
OF COST-REIMBURSEMENT CONTRACTS**

Include the following language, as appropriate, in your modification.

- a. This supplemental agreement settles the termination settlement proposal resulting from the notice of termination dated _____.

- b. The parties agree as follows:
 1. The contract is amended by deleting the terminated portion as follows:
[specify the terminated portion clearly as to (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit and total price of terminated items, and (v) any other explanation necessary to avoid uncertainty or misunderstanding]

 2. The fee stated in the contract is decreased by \$ _____, from \$ _____ to \$ _____.
[Insert if appropriate: "3. The estimated cost of the contract is decreased by \$ _____ from \$ _____ to \$ _____."]

**Sample 6 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Format for No-Cost Settlement Agreements—Complete Termination**

**FORMAT FOR NO-COST SETTLEMENT AGREEMENTS—
COMPLETE TERMINATION**

Include the following language, as appropriate, in your modification.

a. This supplemental agreement _____ [insert "modifies the contract to reflect a no-cost settlement agreement with respect to the notice of termination dated _____" or, if the contract has not been previously terminated, "terminates the contract in its entirety"].

b. The parties agree as follows:

The contractor unconditionally waives any charges against the Postal Service because of the termination of the contract and, except as set forth below, releases it from all obligations under the contract or due to its termination. The Postal Service agrees that all obligations under the contract are concluded, except as follows:

[List reserved or excepted rights and liabilities. See PM 6.9.3.b and c.]

Sample 7 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Format for No-Cost Settlement Agreements—Partial Termination

**FORMAT FOR NO-COST SETTLEMENT AGREEMENTS—
PARTIAL TERMINATION**

Include the following language, as appropriate, in your modification.

- a. This supplemental agreement modifies the contract to reflect a no-cost settlement agreement with respect to the notice of termination dated _____.
- b. The parties agree as follows:
 1. The terminated portion of the contract is as follows: [specify (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit and total price of terminated items, and (v) any other explanation necessary to avoid uncertainty or misunderstanding].
 2. The contractor unconditionally waives any charges against the Postal Service arising under the terminated portion of the contract or by reason of its termination, including, without limitation, all obligations of the Postal Service to make further payments or to carry out any further payments or to carry out any further undertakings under the terminated portion of the contract. The Postal Service acknowledges that the contractor has no obligation to perform further work or services or to make further deliveries under the terminated portion of the contract. Nothing in this paragraph affects any other covenants, terms, or conditions of the contract. Under the terminated portion of the contract, the following rights and liabilities of the parties are reserved:
[List reserved or excepted rights and liabilities. See PM 6.9.3.b and c]

Sample 8 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Settlement Agreement Format for Fixed-Price Contract with Terminated Subcontracts

**SETTLEMENT AGREEMENT FORMAT FOR FIXED-PRICE CONTRACT
WITH TERMINATED SUBCONTRACTS**

Include the following language, as appropriate, in your modification. Note that the Postal Service clearly prefers that the contractor effect final settlement with all subcontractors. See PM 6.9.2.c.4.

- a. This agreement settles that portion of the settlement proposal of the contractor that is based upon termination of the following subcontracts entered into in performance of this contract:

[insert a list of terminated subcontracts included in this settlement]

- b. The parties agree to the following:

1. The contractor certifies that each immediate subcontractor whose settlement proposal is included in the proposal settled by the agreement has furnished the contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Postal Service, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.
2. The contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the contractor on its other work. The contractor further certifies that the contracting officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.
3. The contractor transfers, conveys, and assigns to the Postal Service all the right, title, and interest, if any, that the contractor has received or is entitled to receive in and to subcontract termination inventory not otherwise properly accounted for.
4. The contractor shall, within ten days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the contractor so elects, any amounts due and payable to the contractor by those subcontractors.
5. The Postal Service agrees to pay the contractor or its assignee, upon presentation of a proper invoice or voucher, \$_____ [insert net amount of settlement],

Sample 8 for PH 6.9.2-I, Settling Contracts Terminated for Convenience
Settlement Agreement Format for Fixed-Price Contract with Terminated Subcontracts (continued)

which, together with the amount of \$_____ previously paid the contractor as partial, progress, or advance payments, constitutes payment in full and complete settlement, except as provided in subparagraph 6 below, of the amount due the contractor for that portion of its settlement proposal that is based upon termination of the subcontracts listed above.

6. Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

[List reserved or excepted rights and liabilities; see PM 6.9.3.b and c]

Sample 9 for PH 6.9.2-1, Settling Contracts Terminated for Convenience

Format for Agreements That Settle Reservations Contained in Previous Settlement Agreements

**FORMAT FOR AGREEMENTS THAT SETTLE RESERVATIONS
CONTAINED IN PREVIOUS SETTLEMENT AGREEMENTS**

Include the following language in your modification when addressing issues reserved for future settlement in previously signed settlement agreements. See for example, paragraph b.7 of Sample 3 for this procedure and paragraph b.3 of Sample 4 for this procedure.

a. Supplemental Agreement No. _____ dated _____, was executed to reflect the settlement of the termination of this contract. The supplemental agreement excepted from the settlement certain items described in the agreement, including the items described in paragraph b below. This supplemental agreement settles those items listed in paragraph b below.

b. The parties agree to the following:[*]

1. The Postal Service agrees to pay the contractor \$ _____ for the following reserved or excepted items: [list items]
2. The contractor releases and forever discharges the Postal Service from all liabilities and from all existing and future claims and demands that it may have under this contract, insofar as they pertain to the contract for the items described in subparagraph 1 above.

[*When payment is due the Postal Service, reverse the words "Postal Service" and "contractor" in subparagraphs b.1 and b.2.]

Sample for PH 6.9.3-II, Reinstating a Defaulted Contractor
Letter Amending a Notice of Termination for Default

LETTER AMENDING A NOTICE OF TERMINATION FOR DEFAULT

NOTE: This sample letter amends a letter notice of partial termination for default on a fixed-price supply contract. For other than supply contracts or for telegraphic notices (see PH 6.9.1), make appropriate modifications.

Date

Mr. Head Honcho
XYZ Corporation
124 in Street
Our Town, NY XXXXX-XXXX

Dear Mr. Honcho:

The letter notice of termination dated _____ is hereby rescinded and Contract No. _____ is reinstated as detailed in MO _____ to the contract, which is being sent to you under separate cover (or "which is attached to this reinstatement notice").

Jane Justice, Contracting Officer

cc: Assigned counsel
Surety (if any)
Requirements office
Quality Assurance office
Technical Support office

6.10 Remedies and Damages

6.10.1 Remedies

I. Decisions on Remedies

There is usually a variety of choices available to you, depending on how the contract performance is deficient. Refer to the decision chart to this procedure: "Alternatives Available When Contractor Fails to Fulfill Contract Terms," for a menu of some actions you may take to help remedy a particular situation.

II. Guidelines for Repurchasing Against the Contractor's Account (6.10.1.b)

Prerequisites for Charging the Defaulted Contractor

1. *Product Similarity*

In most instances, the items or services under the defaulted contract and those you are repurchasing must be similar not only in functional characteristics but also in physical and mechanical characteristics, if the Postal Service is to recover excess procurement costs. However, if performance specifications were used in the defaulted contract, similarity in physical and mechanical characteristics may not be required. The Checklist, "Tests of Similarity Between Defaulted and Repurchased Items and Services," gives some commonly used criteria.

If you determine that the product-similarity test has been met but the items are not identical, you may adjust the excess costs downward to account for the differences, thereby charging the defaulted contractor "reduced" excess costs. (You may *not* adjust excess costs upward to account for differences.)

2. *Inspection and Testing Similarity*

The inspection and testing procedures can generally be considered "similar" if the new procedures are no more stringent, will produce the same results, or have no effect on cost or price.

3. *Similarity in Other Contract Terms and Conditions*

When evaluating the differences in other contract terms and conditions, you should focus on whether the differences would either increase the cost of performance or result in a price increase.

4. *Effects of Reduced Repurchase Quantities*

Procurement of a smaller quantity than the quantity called for in the defaulted contract may increase the unit cost. Therefore, to calculate the amount to be assessed to the defaulted contractor, you must—

- a. Determine what dollar change in unit cost, if any, is due to the reduction in quantity, and

- b. Multiply that dollar change in unit cost by the number of units to be repurchased, and subtract the product from the full amount of any excess costs of repurchase. The difference is the amount to be assessed.

When the unit prices of the original contract items cannot be compared with the unit prices of the reduced quantity of repurchased items, the excess cost assessment may be completely denied upon an appeal by the defaulted contractor.

Factors in Mitigation of Damages

Postal Service personnel are obligated to keep the defaulted contractor's excess costs to a minimum. The following factors will be considered in determining whether that obligation was fulfilled:

1. The extent of negotiation or price analysis that preceded the repurchase contract;
2. The extent to which available competition entered into the awarding of any repurchase contract, including the extent to which the unsuccessful offerors on the defaulted contract were contacted for the repurchase;
3. The extent to which any lack of competitive practices resulted in increased costs;
4. The extent of any delay in the award and administration of the repurchase contract, and the effect of the delay; and
5. If any incomplete contract work was completed by Postal Service personnel, the extent of any delay or other inefficiencies in such performance.

6.10.2 Damages

Assessment of Liquidated Damages

In deciding whether to assess liquidated damages, you should remember that if the Postal Service shares in the responsibility for the delay on which liquidated damages are based, the Board of Contract Appeals or the Claims Court may rule in favor of the contractor. You, the contracting officer, are the only Postal official authorized to assess liquidated damages. You must determine how much of the delay was caused by the contractor and assess damages only for that delay.

Steps in Computing Liquidated Damages

1. Determine the original delivery date.
2. Add to the original delivery date each day of excusable delay, each day of Postal-caused delay, and each day of extended time already granted under any contract modification. This is the "amended delivery date."

(Note: This is only a starting point. You must account for rescheduling and contractor planning. For instance, if Postal-furnished tooling was necessary for a production contract and arrived at the contractor's doorstep three weeks late, and the contractor was not given any notice that the tooling would arrive late, it is not reasonable to assume that the contractor could immediately start production when the tooling arrived. Another customer's production run would probably be interrupted, and that would be inefficient and costly. When you are aware of Postal-caused delays, you

should be communicating with the contractor on a daily basis, and when you compute the "amended delivery date," you should consider any disruption in the contractor's work scheduling.)

3. Assess liquidated damages from the day after the "amended delivery date" through the date of substantial completion. Include all calendar days during this period.

Substantial Completion

Substantial completion occurs on the day the product or facility is ready for use in the manner intended by the Postal Service at the place required by the contract (for example, f.o.b. destination). Minor defects that do not affect use are not a reason to continue the liquidated damage period. However, you should not actually assess the liquidated damages until the supplies or services have been entirely accepted even if acceptance results from a repurchase against the contractor's account (see PM and PH 6.10.1). (See PM 6.3.1.b.5 concerning acceptance of defective performance.)

Other Considerations

After you have computed liquidated damages, review the checklist for this procedure, "Should I Assess Liquidated Damages?" before notifying the contractor of a liquidated damages assessment.

Even if the checklist indicates that liquidated damages would be appropriate, you may waive them if, in fact, the Postal Service incurred no damages. However, the Postal Service Board of Contract Appeals or Claims Court is likely to uphold a liquidated damages assessment even if the Postal Service did not incur any costs, as long as *at the time the contract was made* it was reasonable to expect the Postal Service to incur costs. Seek the advice of counsel if you suspect or have evidence that the Postal Service incurred no costs as a result of the delay.

When assessment of liquidated damages is appropriate, you should withhold payment under PM 6.4.4.d as necessary to protect the interests of the Postal Service. (When the contract provides for retainage, determine whether the retained amount is sufficient.)

The assessment of liquidated damages is, in effect, a Postal Service claim under the Contract Disputes Act. Therefore, the letter informing the contractor of the assessment is a final decision.

Checklist for PH 6.10.1, Guidelines for Repurchasing Against the Contractor's Account
Tests of Similarity Between Defaulted and Repurchased Items and Services

**TESTS OF SIMILARITY BETWEEN DEFAULTED AND REPURCHASED
ITEMS AND SERVICES**

If you check "No" in answer to any question, your items or services fail the product-similarity test.

NO YES N/A

- | | | | |
|-------|-------|-------|---|
| _____ | _____ | _____ | 1. Items: Are they similar in physical appearance and mechanical characteristics? |
| _____ | _____ | _____ | 2. Items: Do they perform similar functions? |
| _____ | _____ | _____ | 3. Services: Were they performed to meet the same functional goal? |
| _____ | _____ | _____ | 4. If changes were made to specifications, would these changes have been allowable under the Changes clause of the defaulted contract? |
| _____ | _____ | _____ | 5. If the Postal Service made changes to the specifications when it went out to repurchase, did the changes either cause a decrease in or have no effect on the repurchase contract price? (Note that it does not matter if the repurchase contractor chose a more costly method on its own as long as the specification in both contracts allowed the choice. A classic example is in the possibility of choosing new material or surplus material.) |
| _____ | _____ | _____ | 6. If the repurchase contractor voluntarily made significant improvements in carrying out the Postal Service specifications (for example, by using copper tubing instead of the steel that was specified), can you determine that the voluntary improvement led to no increase in the repurchase contract cost? (For example, if the repurchase contractor had the copper tubing left over from another job and charged the Postal Service only for what Postal would have had to pay for steel, the improvement would be of no consequence with respect to contract cost.) |

Decision Chart for PH 6.10.1, Remedies**Alternatives Available When Contractor Fails to Fulfill Contract Terms****ALTERNATIVES AVAILABLE WHEN CONTRACTOR FAILS TO FULFILL CONTRACT TERMS**

Use the following decision aid as a quick reference point for the full range of possible or required remedies in all circumstances of deficient performance. Before initiating any action, refer to the cited references for factors, considerations, and requirements to ensure that the actions you are considering are reasonable and practicable under the existing circumstances. Note that some actions must be taken in conjunction with others listed, while others are alternatives to each other. It is essential that you research beyond this reference tool.

DEFICIENCY	REMEDIAL ACTIONS	REFERENCE
Fails to start or continue performance.	1. Send a demand for adequate assurance notice to contractor.	PM 6.2.5; PM Clause B-12 and B-13; PH 6.2.5
	2. Treat as anticipatory repudiation and send a notice of impending termination to contractor.	PM 6.2.6, 6.9.3; PH 6.2.5, 6.2.6, 6.9.3
	3. If bond exists, give notice to sureties.	PM 7.1.10.a.2; PH 7.1.10
	4. Issue notice of termination for default.	PM 6.9.1.c and d, 6.9.3; PH 6.9.1, 6.9.3
	5. Reprocure and charge excess costs to contractor.	PM 6.10.1, Clause B-13; PH 6.10.1
	6. Recover incidental, consequential, and other damages due as a result of contractor's failure.	PM 6.10.2; PH 6.10.2
	7. Initiate action to suspend and debar contractor.	PM 3.3.2; PH 3.3.2
Fails to make progress so as to endanger delivery when due.	1. Send a demand for adequate assurance to contractor.	PM 6.2.5; PM Clause B-12 and B-13; PH 6.2.5
	2. Send notice of impending termination to contractor.	PM 6.2.6, 6.9.3; PH 6.2.6, 6.9.3
	3. If performance bond exists, send copy of above notice to surety. PM 7.1.10.a.2; PH 7.1.10	

Decision Chart for PH 6.10.1, Remedies**Alternatives Available When Contractor Fails to Fulfill Contract Terms (continued)**

DEFICIENCY	REMEDIAL ACTIONS	REFERENCE
Fails to make progress so as to endanger delivery when due.	4. Issue notice of termination for default.	PM 6.9.1.c and d, 6.9.3; PH 6.9.1, 6.9.3
	5. Reprocure and charge excess costs to contractor.	PM 6.10.1; PM Clause B-13; PH 6.10.1
	6. Recover incidental, consequential, and other damages due as a result of contractor's failure.	PM 6.10.2; PH 6.10.2
	7. Initiate action to suspend and debar contractor.	PM 3.3.2; PH 3.3.2
Fails to deliver or perform, or fails to deliver or perform completely when due.	1. Send a notice of forbearance to contractor.	PM 6.9.3; PM Clause B-12 and B-13; PH 6.2.5, 6.9.3
	2. Send a notice of impending termination to contractor.	PM 6.9.3; PH 6.2.5, 6.9.3
	3. If performance bond exists, give notice to sureties.	PM 7.1.10.a.2; PH 7.1.10
	4. Issue notice of termination for default.	PM 6.9.1.c and d, 6.9.3; PH 6.9.1, 6.9.3
	5. Reprocure and charge excess costs to contractor.	PM 6.10.1; PM Clause B-13; PH 6.10.1
	6. Recover incidental, consequential, and other damages due as a result of contractor's failure.	PM 6.10.2; PH 6.10.2
	7. Initiate action to suspend and debar contractor.	PM 3.3.2; PH 3.3.2
Delivers nonconforming supplies or services on or after delivery date.	1. Give prompt written notice of defects to contractor.	PM 6.3.1.b.3

Decision Chart for PH 6.10.1, Remedies**Alternatives Available When Contractor Fails to Fulfill Contract Terms (continued)**

DEFICIENCY	REMEDIAL ACTIONS	REFERENCE
Delivers nonconforming supplies or services on or after delivery date (cont'd).	2. Provide contractor an opportunity to provide acceptable substitute.	PM 6.3.1; PH 6.3
	3. If defects are minor and cannot be corrected within delivery schedule, accept with consideration.	PM 6.3.1; PM Clause 2-1 and 2-2; PH 6.3
	4. If defects adversely affect the basic contract objective, reject supplies or services.	PM 6.3.1; PM Clause 2-1 and 2-2; PH 6.3
	5. Acquire conforming supplies or services and charge contractor for costs incurred.	PM 6.3.1; PM Clause 2-1; PH 6.3
	6. Send a notice of forbearance to contractor.	PM 6.9.3; PM Clause B-12 and B-13; PH 6.2.5, 6.9.3
	7. If a performance bond exists, send notice to surety.	PM 7.1.10.a.2; PH 7.1.10-I
	8. Issue a notice of termination for default to contractor.	PM 6.9.1.c and d, 6.9.3; PH 6.9.1, 6.9.3
	9. Withhold payment for items received.	PM 6.4.4
	10. Reprocure and charge excess costs to contractor.	PM 6.10.1; PM Clause B-13; PH 6.10.1
	11. Recover incidental, consequential, and other damages due as a result of contractor's failure.	PM 6.10.2; PH 6.10.2
	12. Initiate action to suspend and debar contractor.	PM 3.3.2; PH 3.3.2

Decision Chart for PH 6.10.1, Remedies*Alternatives Available When Contractor Fails to Fulfill Contract Terms (continued)*

DEFICIENCY	REMEDIAL ACTIONS	REFERENCE
Supplies or services found defective or nonconforming after acceptance.	1. Revoke acceptance.	PM 6.3.2.e; PM Clause 2-1; PH 6.3
	2. Give prompt written notice of defects.	PM 6.3.1.b.3
	3. Provide contractor an opportunity to provide acceptable substitute.	PM 6.3.1, PH 6.3
	4. If defects are minor and cannot be corrected within delivery schedule, accept with consideration.	PM 6.3.1; PM Clause 2-1; PH 6.3
	5. If defects adversely affect the basic contract objective, reject supplies or services.	PM 6.3.1; PM Clause 2-1 and 2-2; PH 6.3
	6. Acquire conforming supplies or services and charge contractor for costs incurred.	PM 6.3.1; PM Clause 2-1; PH 6.3
	7. Send a notice of forbearance to contractor.	PM 6.9.3; PM Clause B-12 and B-13; PH 6.2.5, 6.9.3
	8. If a performance bond exists, send notice to surety.	PM 7.1.10.a.2; PH 7.1.10
	9. Issue a notice of termination for default to contractor.	PM 6.9.1.c and d, 6.9.3; PH 6.9.1, 6.9.3
	10. Withhold payment for defective items.	PM 6.4.4.b
	11. Reprocure and charge excess costs to contractor.	PM 6.10.1; PM Clause B-13; PH 6.10.1
	12. Recover incidental, consequential, and other damages due as a result of contractor's failure.	PM 6.10.2; PH 6.10.2

Decision Chart for PH 6.10.1, Remedies*Alternatives Available When Contractor Fails to Fulfill Contract Terms (continued)*

DEFICIENCY	REMEDIAL ACTIONS	REFERENCE
Supplies or services found defective or nonconforming after acceptance (cont'd.)	13. Initiate action to suspend and debar contractor.	PM 3.3.2; PH 3.3.2
Fails to comply with other contract terms.	1. Send a demand for adequate assurance to contractor. 2. Send a notice of impending termination to contractor. 3. If performance bond exists, send copy of above notice to surety. 4. Issue a notice of termination for default to contractor. 5. Reprocure and charge excess costs to contractor. 6. Recover incidental, consequential, and other damages due. 7. Initiate action to suspend and debar contractor.	PM 6.2.5; PM Clause B-12 and B-13; PH 6.2.5 PM 6.2.6, 6.9.3; PH 6.2.6, 6.9.3 PM 7.1.10.a.2; PH 7.1.10 PM 6.9.1.c and d, 6.9.3; PH 6.9.1, 6.9.3 PM 6.10.1; PM Clause B-13; PH 6.10.1 PM 6.10.2; PH 6.10.2 PM 3.3.2; PH 3.3.2

Checklist for PH 6.10.2, Assessment of Liquidated Damages
Should I Assess Liquidated Damages?

SHOULD I ASSESS LIQUIDATED DAMAGES?

If you answer "No" to any question, liquidated damages are inappropriate.

NO

YES

- | | | |
|-------|-------|--|
| _____ | _____ | 1. Has the contract been fully completed and not just substantially completed? (If minor deficiencies remain, delay assessment of liquidated damages until the contract is fully complete or until the supplies or services have been accepted with defects per PM 6.3.1.b.5. Note that you will still assess liquidated damages based on <i>substantial</i> completion. Timing is the issue here. You should settle all consideration and damages issues in one session.) |
| _____ | _____ | 2. Were all formal procedures in relation to liquidated damages followed? |
| _____ | _____ | 3. Did the Postal Service contribute in any way to the delay (for example, with late delivery of Postal-furnished equipment, delay in required Postal Service approvals, and the like), and did you account for such delay in your computation of liquidated damages? (Note: If Postal delays ran concurrent with contractor-caused delays on any day, do not add those days to the contract completion date for liquidated damages computation.) |
| _____ | _____ | 4. Can you substantiate, and have you documented, how the liquidated damages as originally calculated were related to the damages the delay was likely to cause, as figured at the time the contract was awarded? |
| _____ | _____ | 5. Are the liquidated damages reasonable in light of the contract price? (Note: It would be appropriate to seek approval of remission of damages that go beyond an overall maximum dollar amount or period of time, or both, even though the contract itself does not set such limits.) |
| _____ | _____ | 6. Did the Postal Service do everything it could to minimize liquidated damages (for example, if a repurchase took place per PM 6.10.1.b, was the repurchase contract let in a timely manner)? If not, have you made an appropriate adjustment in your assessment? |

Chapter 7

Bonds, Insurance, and Taxes

7.1 Bonds

I. Checking Bond Information for Completeness	7.1-1
II. Determining the Penal Amount for a Bond	7.1-1
7.1.3 Performance Bonds	
Determining When a Performance Bond Is Needed and What Provisions to Include	7.1-2
7.1.4 Payment Bonds	
Determining When a Payment Bond Is Needed and What Provisions to Include	7.1-3
7.1.5 Patent Infringement Bonds	
Determining When a Patent Infringement Bond Is Needed	7.1-5
7.1.6 Fidelity Bonds	
Determining When a Fidelity Bond Is Needed	7.1-5
7.1.8 Execution of Bonds	
Determining When the Amount of a Bond Must Be Increased (7.1.8.g)	7.1-6
7.1.9 Sureties	
Depositing, Accounting for, and Reporting Assets Provided by a Contractor in Lieu of a Bond	7.1-6
7.1.10 Contract Administration	
I. Notifying Sureties of Potential Contractor Default and Arranging for Contract Completion	7.1-8
II. Determining Substantial Completion	7.1-9
Checklist: Bond Checklist	7.1-10
Format: Certificate of Substantial Completion	7.1-12

7.2 Insurance

7.2.1 General	
Verifying Contractor Insurance Coverage	7.2-1
7.2.2 Types of Insurance	

	Determining Occupational Diseases to Be Covered by Workers' Compensation or Employer Liability Insurance	7.2-1
7.2.3	Self-Insurance	
	Determining Whether a Contractor's Self-Insurance Program is Qualified	7.2-2
7.2.4	Errors and Omissions Insurance	
	Determining the Required Amount of Errors and Omissions Insurance Coverage	7.2-2
	Format: Insurance Policy Certification	7.2-3
7.3	Taxes	
7.3.3	State and Local Taxes	
	Determining Allowability of State and Local Taxes	7.3-1

7.1	Bonds
------------	--------------

I. Checking Bond Information for Completeness

To protect the Postal Service's and the contractor's interests, it is important to make sure that a bond contains all necessary information. The checklist for this procedure, "Bond Checklist," shows the information needed.

II. Determining the Penal Amount for a Bond**Construction Versus Nonconstruction Contracts**

The penal amount for performance bonds under construction contracts must equal that specified in PM 7.1.3.a (see also PH 7.1.8, *Determining When the Amount of a Bond Must Be Increased*).

Keep in mind the distinction made in PM 7.1.3 between performance bonds for construction (often termed "Miller bonds") and performance bonds for other than construction. For construction performance bonds, as a rule of thumb use a penal amount equal to 100 percent of the contract price. (However, you can use a lesser amount if the surrounding circumstances warrant it and if a lesser amount will adequately protect Postal Service interests.) For nonconstruction performance bonds, in establishing the penal amount you must make sure that Postal Service interests are adequately protected.

As with nonconstruction performance bonds, with other types of bonds, too—for example, payment bonds under other than construction contracts, patent infringement bonds, and fidelity bonds—you must determine the penal amount that will protect Postal Service interests.

Criteria

To help you determine the bond penal amount that will adequately protect Postal Service interests, use the following criteria:

1. Bond Cost

The contractor must pay a price for any bond, and that price will ultimately be paid by the Postal Service. If the bond price is high in relation to the other criteria, a lower penal amount may be in order.

2. Contractor History—A Consideration for Noncompetitive Contracts

If the contractor's history indicates that the bond requirement is more a formality than protection against a potential risk, a lower penal amount is warranted. Conversely, if the contractor's history indicates there is a potential risk for which the bond is sought, then the penal amount should be higher. If the contractor has no previous business history, the penal amount should be higher.

For patent infringement bonds, look for past and pending infringement claims against the contractor to determine the bond penal amount. Consider the number of claims, the amount of the claims, the resolution of the claims if resolved, and the length of time that has passed since the claims were made or resolved.

For fidelity bonds, consider the contractor's past history to determine a probability of loss through employee loss or theft. In addition, consider the amount of Postal Service property for which the contractor may be responsible.

3. Criticalness of Supplies or Services

If the Postal Service's need for the supplies or services is critical, a higher penal amount would be warranted, particularly for performance and payment bonds. However, if the need is not critical, if there would be adequate time to reprocure, and if the Postal Service would have other adequate contract remedies, a lower penal amount could be specified.

4. Other Contract Remedies

If other available contract remedies for contractor violation of bonded requirements are limited or would be hard to enforce, the penal amount should be higher.

7.1.3 Performance Bonds

Determining When a Performance Bond Is Needed and What Provisions to Include

Answer these questions to determine whether a performance bond is needed and, if so, which provisions and clauses should be included in the solicitation and contract, respectively.

Questions

1. Is the contract for construction?

If the contract is for construction, go to question 2.

If the contract is for other than construction, go to question 5.

2. Is the construction contract expected to exceed \$25,000?

If it is expected to exceed \$25,000, go to question 3.

If it is expected to be \$25,000 or less, go to instruction C.

3. Is any of the contract work to be performed outside the United States in a country where it is impractical for a contractor to furnish a performance bond?

If any of the work is to be performed outside the United States in a country where it is impractical to obtain a performance bond, go to question 4.

If none of the work is to be performed outside the United States in a country where it is impractical for a contractor to obtain a performance bond, go to instruction B.

4. Is all of the contract work to be performed outside the United States in a country where it is impractical to obtain a performance bond?

If all of the work is to be performed outside the United States in a country where it is impractical to obtain a performance bond, go to instruction C.

If only a part of the work is to be performed outside the United States in a country where it is impractical to obtain a performance bond, go to instruction A.

5. Does the contract require the use of Postal Service property or funds during contract performance?

If it does, go to instruction B.

If it does not, go to question 6.

6. Has a prospective contractor sold its assets to, or merged with, another firm, or is there a possibility of its doing so?

If a prospective contractor has sold its assets to, or merged with, another firm, or if there is probability of its doing so, go to instruction B.

If not, go to question 7.

7. Will the first delivery of the product or service take place more than 12 months after contract award and are substantial progress payments contemplated?

If first delivery will take place more than 12 months after the award *and* substantial progress payments are contemplated, go to instruction B.

If first delivery will take place in 12 months or less *or* substantial progress payments are not contemplated, go to instruction C.

Instructions

- A. Include in the solicitation: Provision 7-1, *Performance Guarantee*; Provision 7-2, *Performance Bond Requirements* but only for those portions of the contract work that are to be performed within the United States or outside the United States in a country for which a performance bond may be obtained; and Provision 7-5, *Deposit of Asset Requirements*. Insert in the contract: Clause 7-2, *Additional Bond Security*, and Clause 7-3, *Deposit of Assets Instead of Surety Bonds*.
- B. Include in the solicitation: Provision 7-1, *Performance Guarantee*; Provision 7-2, *Performance Bond Requirements*; and Provision 7-5, *Deposit of Asset Requirements*. Insert in the contract: Clause 7-2, *Additional Bond Security*, and Clause 7-3, *Deposit of Assets Instead of Surety Bonds*.
- C. In the solicitation, do not include Provision 7-1, *Performance Guarantee*, or Provision 7-2, *Performance Bond Requirements*. In the contract, do not insert Clause 7-2, *Additional Bond Security*, or Clause 7-3, *Deposit of Assets Instead of Surety Bonds*.

7.1.4	Payment Bonds
--------------	----------------------

Determining When a Payment Bond Is Needed and What Provisions to Include

Answer these questions to determine whether a payment bond is needed and, if so, which provisions and clauses should be included in the solicitations and contracts, respectively.

Questions**1. Is the contract for construction?**

If the contract is for construction, go to question 2.

If the contract is for other than construction, go to question 5.

2. Is the construction contract expected to exceed \$25,000?

If it is expected to exceed \$25,000, go to question 3.

If it is expected to be \$25,000 or less, go to instruction D.

3. Is any of the contract work to be performed outside the United States in a country where it is impractical for a contractor to furnish a payment bond?

If any of the work is to be performed outside the United States in a country where it is impractical to obtain a payment bond, go to question 4.

If none of the work is to be performed outside the United States in a country where it is impractical for a contractor to obtain a payment bond, go to instruction B.

4. Is all of the contract work to be performed outside the United States in a country where it is impractical to obtain a performance bond?

If all of the work is to be performed outside the United States in a country where it is impractical to obtain a payment bond, go to instruction D.

If only a part of the work is to be performed outside the United States in a country where it is impractical to obtain a payment bond, go to instruction A.

5. Is the contract for supplies or services that are unique to the Postal Service and can be obtained only from a source that is not the producer of the supplies or services?

If it is, go to instruction B.

If it is not, go to question 6.

6. Has a prospective contractor sold its assets to, or merged with, another firm, or is there a probability of its doing so?

If a prospective contractor has sold its assets to, or merged with, another firm, or if there is a possibility of its doing so, go to instruction C.

If not, go to question 7.

7. Is the contract for supplies that require substantial production costs, with first delivery several months after contract award, and with no progress payments contemplated?

If production costs are substantial or first delivery will be several months after contract award or Postal Service will not make progress payments, go to instruction C.

If production costs are not substantial or first delivery will be immediate or the Postal Service will make progress payments, go to question 8.

8. Is an uninterrupted provision of supplies or services essential to the continued operations of Postal Service functions?

If it is, go to instruction C.

If it is not, go to instruction D.

Instructions

- A. Include in the solicitation, but only for those portions of the contract work that are to be performed within the United States or outside the United States in a country where a payment bond may be obtained: Provision 7-3, *Payment Bond Requirements*. Insert in the contract: Clause 7-2, *Additional Bond Security*, and Clause 7-3, *Deposit of Assets Instead of Surety Bonds*.
- B. Include in the solicitation: Provision 7-3, *Payment Bond Requirements*. Insert in the contract: Clause 7-2, *Additional Bond Security*, and Clause 7-3, *Deposit of Assets Instead of Surety Bonds*.
- C. Include in the solicitation: Provision 7-3, *Payment Bond Requirements*, and Provision 7-5, *Deposit of Assets Requirements*. Insert in the contract: Clause 7-2, *Additional Bond Security*, and Clause 7-3, *Deposit of Assets Instead of Surety Bonds*.
- D. In the solicitation, do not include Provision 7-3, *Payment Bond Requirements*. In the contract, do not insert Clause 7-2, *Additional Bond Security*, or Clause 7-3, *Deposit of Assets Instead of Surety Bonds*.

7.1.5	Patent Infringement Bonds
--------------	----------------------------------

Determining When a Patent Infringement Bond Is Needed

Insert Clause 7-1, *Patent Infringement Bond Requirements*, in all contracts requiring the use of Clause 9-4, *Patent Indemnity* (see PM 9.2, Patents).

Require the contractor to post a patent infringement bond whenever—

- It appears that the contractor would have inadequate resources to indemnify the Postal Service for patent infringement, or
- The Postal Service learns that the contractor may be infringing a patent developed in the course of a covered contract.

Insert Clause 7-2, *Additional Bond Security*, in the same contracts.

7.1.6	Fidelity Bonds
--------------	-----------------------

Determining When a Fidelity Bond is Needed

Include Provision 7-4, *Fidelity Bond Requirements*, in all solicitations resulting in contracts that require—

- The Postal Service to provide the contractor with Postal Service Property in excess of \$50,000 for contract performance, or
- The contractor to handle Postal funds or valuable property during contract performance.

Whenever Provision 7-4 is included in the solicitation, insert Clause 7-2, *Additional Bond Security*, in the contract.

7.1.8 Execution of Bonds**Determining When the Amount of a Bond Must Be Increased (7.1.8.g)****Performance and Payment Bonds**

Generally, when there is an individual contract modification, you do not have to increase the penal amount of a bond if the modification would increase the total contract price by an amount less than 10 percent. However, you must ensure an adequate penal amount in the following circumstances:

- *Performance bonds.* Whenever current or previous modifications increase the latest negotiated, 100 percent bonded, total contract price by 10 percent or more, you must revise the penal amount to equal 100 percent of the revised contract price.
- *Payment bonds.* Whenever current or previous modifications increase the latest negotiated, appropriately bonded, total contract price by 10 percent or more, you must revise the penal amount to equal the following:
 - When the revised total contract price is not more than \$1 million: 100 percent of the revised total contract price.
 - When the revised total contract price is more than \$1 million but not more than \$10 million: 40 percent of the revised total contract price.
 - When the revised total contract price is more than \$10 million: \$2.5 million.

Other Bonds

Whenever the Postal Service learns that the present penal amount or the contractor's financial situation is insufficient to protect Postal Service interests under any indemnity provided by the contractor, you must increase the amount of any bond provided by the contractor.

Failure of Contractor to Provide Additional Security

You must insert Clause 7-2, *Additional Bond Security*, in all contracts requiring a bond. If the contractor fails or refuses to provide the additional security, consult assigned counsel to determine if termination for default or termination for convenience procedures should be initiated.

7.1.9 Sureties**Depositing, Accounting for, and Reporting Assets Provided by a Contractor in Lieu of a Bond**

Except for a payment bond required under a construction contract, instead of a bond you may accept from a contractor those assets described in PM 7.1.9.d.2.

If you accept assets instead of a bond, you must determine the value of the assets. That value must at least equal the penal amount of the bond.

In valuing U.S. bonds and notes, use the par value or market value, whichever is less. Normally, the market value of an unmatured bond or note is less than its stated par value. For example, the market value of a Series E U.S. bond with a par value of \$25 will be worth less than the par value before its maturity. By using the lesser of par or market value, you ensure the Postal Service's ability to obtain the penal amount, since the assets may be sold for the Postal Service's behalf in the event of contractor default.

When the contractor pledges assets, make sure it completes the appropriate bond form describing the pledged assets. Use a copy of the completed form to establish the initial inventory of the assets, and update the inventory as required to reflect new assets pledged, withdrawn, or revalued. The inventory must describe the asset pledged and its market and par values, if applicable.

U.S. bonds and notes that have been pledged by the contractor should be kept in a secure safe. Currency, checks, and drafts should be deposited with the Postal Data Center, with instructions to hold them for the benefit of the contractor. Obtain a receipt from the Postal Data Center for those assets. The receipt must identify the contractor, the assets, and their value.

Quarterly—March 31, June 30, September 30, and December 31—update the inventory of contractor assets held to reflect all assets currently held, the current market and par values of U.S. bonds and notes, and assets deposited with the Postal Data Center and interest accrued on them. Contact the Postal Data Center to determine the interest accrued.

By April 30, July 31, October 31, and January 31, furnish the contractor with a copy of the asset inventory as of the March 31, June 30, September 30, and December 31 dates, respectively.

Unless you receive notice of a claim against the contractor, return to the contractor all contractor assets with accrued interest, along with the inventory current as of the time of contract closeout, within 90 days of contractor completion of all contract obligations. (Obtain those contractor assets held by the Postal Data Center, along with accrued interest. Provide the Postal Data Center with a receipt.) The return should be made either in person or by certified mail, return receipt requested. Obtain from the contractor a receipt for the assets. Include the receipt in the contract file.

If at any time it appears that the contractor may default on its obligations, or if a claim is made against the contractor for which some or all of the assets may be seized, you must obtain guidance from assigned counsel on how to proceed.

The following paragraph describes what you must do in general terms. Note, however, that *you must not take action to seize and dispose of contractor assets without specific guidance by assigned counsel.*

You must notify the contractor of the conditions or claims giving rise to the Postal Service's right to seize and dispose of the assets. Before the Postal Service may seize and dispose of the assets, you must give the contractor the opportunity to correct the adverse conditions. If the conditions are not corrected within a reasonable time, you may default the contractor and dispose of the assets for the benefit of the Postal Service. Any amounts recovered in excess of the penal sum would be returned to the contractor.

7.1.10 Contract Administration**I. Notifying Sureties of Potential Contractor Default and Arranging for Contract Completion**

If it appears that a contractor that has been required to provide a performance bond may be terminated for default, you must take the following steps *with guidance from assigned counsel*.

Notification of Sureties

Before actually terminating a contractor for default, you must notify the contractor and each surety named on the performance bond of the potential termination for default. The notice must concisely describe why a default termination is being considered, notify the sureties of their particular obligations in the event of termination, and demand adequate assurance of their performance.

You must allow a reasonable time between the sureties' receipt of the notice and any contemplated default termination. During this time, the sureties may be able to resolve the issues leading to the contemplated termination through financial or technical assistance to the contractor. A reasonable time should not exceed 90 days without the concurrence of assigned counsel.

Negotiation of Surety Takeover Agreement

If it appears that Postal Service interests would be better served by reprocurement, you do not have to negotiate a surety takeover agreement. Therefore, you must determine which is more cost effective and in the best interests of the Postal Service, reprocurement or negotiation of a surety takeover agreement. Note, however, that if you reprocure, the original contractor and its sureties are responsible for reasonable excess reprocurement costs.

To initiate the surety takeover agreement, request the sureties to submit a proposal for completing the contract and carrying out their obligations under the performance bond. The proposal should be due as soon as possible but not later than 30 days from the request, unless a longer period is agreed to by assigned counsel.

The actual agreement may envision a number of alternatives--for example, completion of the contract with the existing contractor or completion by another contractor. Before accepting the existing contractor as the completion contractor under the bond, you must determine whether it is now, under the management of the surety, capable of completing the contract when it was unable to do so before. The specifics will depend upon the circumstances of the individual procurement. Unless assigned counsel agrees otherwise, the agreement must not relieve the sureties of any of their obligations under the performance bond. To make sure that the sureties are bound in the agreement by their obligations under the bond, the following clause must be included in the agreement unless counsel agrees otherwise:

Notwithstanding any other provision in this agreement, nothing in this agreement shall be construed to relieve the sureties named in the performance bond dated _____ of the obligations contained therein.

The agreement must be signed by each of the sureties named in the bond. If fewer than all of the sureties agree to take over the project, the nonparticipating sureties should still sign an agreement allowing the other sureties to do so.

Use of Certified Mail

You must send all correspondence (notices, requests for proposal, and so forth) to the sureties by certified mail, return receipt requested.

Agreements to Have Surety Assume Primary Responsibility Prior to Default

If the surety cannot resolve existing problems through assistance to the contractor, it may assume primary responsibility for contract completion prior to default, but only with the concurrence of the contractor.

You would issue a contract modification containing an agreement meeting all of the requirements of a surety takeover agreement as specified above and, in addition, you are required to obtain the contractor's signature.

II. Determining Substantial Completion

The Postal Service is entitled to contractor compliance with its specifications. However, it would be imprudent to insist on strict compliance if the project is usable for the intended purpose or if strict compliance would result in economic waste (that is, if the cost of insisting on strict compliance outweighs the benefits the Postal Service would receive).

When the project is usable for the Postal Service's intended purposes but does not comply in all respects with the "punch list" inspection, issue a Certificate of Substantial Completion (see the format for this procedure). For those elements not in compliance with the contract, require compliance or negotiate with the contractor an equitable contract adjustment (for instance, a contract deduction or extended warranty service).

If the contractor has substantially deviated from contract requirements such that the project or major portions of it cannot be used by the Postal Service as intended, do not issue a Certificate of Substantial Completion. Instead, seek the advice of assigned counsel on how to proceed.

If you are uncertain whether a contractor substantially completed a project, before issuing a Certificate of Substantial Completion you must seek the written opinions of the assigned inspector, technical representative, and counsel.

Checklist for PH 7.1, Checking Bond Information for Completeness
Bond Checklist

BOND CHECKLIST

Use this checklist as a guide to make sure that a bond contains all necessary information.

- _____ 1. Name and address of principal (usually, the contractor)

- _____ 2. Sureties
 - _____ Corporate surety
 - _____ Name
 - _____ Address
 - _____ State of incorporation
 - _____ Qualification in particular jurisdiction
 - _____ Individual surety
 - _____ Names and addresses
 - _____ Number
 - _____ Financial qualifications

- _____ 3. Designation of obligee (the Postal Service procurement activity)

- _____ 4. Acknowledgment of indebtedness of the sureties
 - _____ Joint and several
 - _____ or
 - _____ Several, but not joint

- _____ 5. Penal amount

- _____ 6. Purpose of bond

Checklist for PH 7.1, Checking Bond Information for Completeness
Bond Checklist (continued)

- _____ 7. Condition of bond
- _____ 8. Citation of governing statute, if applicable
(for example, Miller Act, 40 U.S.C. 270a - e)
- _____ 9. Scope of indemnification
 - _____ Loss or damage
 - _____ Liability
- _____ 10. Term of bond
- _____ 11. Termination
- _____ 12. Limit of time for bringing action on bond
- _____ 13. Premium or consideration for bond (recommended but not required)
- _____ 14. Delivery and acceptance (general statement that the
parties have executed and signed the bond)
- _____ 15. Signature(s)
- _____ 16. Power of Attorney or other evidence that the person signing the bond has
authority to commit the bonding company.
- _____ 17. Date

Format for PH 7.1.10-II, Determining Substantial Completion
Certificate of Substantial Completion

CERTIFICATE OF SUBSTANTIAL COMPLETION

[RESERVED]

7.2 Insurance**7.2.1 General****Verifying Contractor Insurance Coverage**

You must insert Clause 7-4, *Insurance*, and Clause 7-5, *Errors and Omissions*, in a contract as required under PM 7.2.

Before the contractor begins performance, you must obtain verification of its insurance coverage in one of the two ways described here:

- You may distribute the Insurance Policy Certification format, shown as the format for this procedure, as part of the solicitation package. Applicable insurance carriers of the contractor receiving the award must complete the format, and return it before the contractor begins work.
- You may obtain from the contractor true copies of applicable insurance policies and verify that—
 - The policies contain the required coverage;
 - The Postal Service is named as the loss payee, when applicable (may be contained in a rider); and
 - The policies provide for Postal Service notification 30 days in advance of the effective date of any insurance reduction, cancellation, or material change (may be contained in a rider).

You must also verify the date of policy expiration. If a policy will expire during contract performance, five days before the expiration you must get evidence of renewal.

7.2.2 Types of Insurance**Determining Occupational Diseases to Be Covered by Workers' Compensation or Employer Liability Insurance**

The occupational diseases that are covered by workers' compensation statutes vary by jurisdiction. Therefore, you must obtain a listing from assigned counsel of the occupational diseases that are covered by local workers' compensation statutes and those that must be covered by employer liability insurance.

7.2.3 Self-Insurance

Determining Whether a Contractor's Self-Insurance Program Is Qualified

If a contractor proposes a self-insurance program in lieu of insurance required by a contract, the contractor must provide a complete description of how the program qualifies. Before contract award, you must receive assigned counsel's review and approval of the contractor's proposed self-insurance program.

7.2.4 Errors and Omissions Insurance

Determining the Required Amount of Errors and Omissions Insurance Coverage

Unless it is not possible to obtain errors and omissions insurance in the particular jurisdiction, use the same criteria for determining the required amount of errors and omissions insurance coverage that you use in determining the penal amount for a bond (see PH 7.1-II). In addition, when considering the impact on the Postal Service of an error or omission on the part of a professional service contractor, keep in mind the professional services contracted for and the criticalness of those services to Postal Service requirements.

If you believe the requirement for errors and omissions insurance can be waived or if it appears that you cannot get the insurance in a particular jurisdiction, you must get written concurrence from assigned counsel.

Format for Procedure 7.2.1, Verifying Contractor Insurance Coverage
Insurance Policy Certification

INSURANCE POLICY CERTIFICATION

The United States Postal Service contemplates the award of contract number [insert number] (the contract) to [contractor inserts complete name and address] (the contractor). The expected completion date of the contract is [insert date].

If the Postal Service awards the contract to the contractor, the undersigned shall provide insurance coverage to the contractor in the minimum amount required by clause number [insert number], titled [insert clause title], of the contract.

The additional loss payee clause of the policy reads/shall read United States Postal Service, [insert the address of the Postal Service procurement office].

The inception date of the policy is/was [insurer inserts date]. The expiration date of the policy is [insurer inserts date]. If insurance coverage expires before the expected contract completion date, the policy provides for the undersigned to notify the Postal Service of policy renewal, if any, at least five days before the expiration of the existing policy.

The policy also provides for the undersigned to notify the Postal Service 30 days in advance of the effective date of any insurance reduction, cancellation, or material change.

INSURER

[Insurer inserts complete name and address]

AUTHORIZED AGENT

[Authorized agent inserts name and signs]

DATE

[Authorized agent inserts date signed]

7.3 Taxes**7.3.3 State and Local Taxes****Determining Allowability of State and Local Taxes**

Use the following as a guide for determining the allowability of State and local taxes for cost reimbursement contracts to which the cost principles of PM Chapter 5 apply.

Taxes on Business Transactions

In general, if a state or local tax included in the contract price is on the seller and the seller alone is obligated to pay it, the Postal Service may reimburse the seller for the tax. However, if the buyer is in any way legally responsible for payment of the tax, the Postal Service as a buyer cannot be held accountable for such payment. Thus, if a tax is imposed solely on the seller, it is considered a cost of the seller's doing business whether or not the seller chooses to pass the tax on to its customers, including the Postal Service. However, if the seller is required to pass the tax on to the consumer, the Postal Service, as the buyer, is constitutionally immune from the tax inasmuch as it is an agency of the Federal Government.

The Postal Service may pay a valid "vendor (seller) tax" even if in so doing, it bears the ultimate economic burden. At the same time it is constitutionally immune from a "vendee (buyer) tax."

Consequently, to determine whether the Postal Service is liable, you must determine upon whom the legal burden of a particular tax falls. If the legal burden of a particular tax is not readily ascertainable, seek guidance from assigned counsel.

Further, the Postal Service will not be liable for a State or local tax that is applied in a discriminatory manner against the Government. If it appears that an otherwise validly reimbursable tax is being discriminatorily applied against the Postal Service, seek guidance from assigned counsel.

Taxes Related to Property

Postal Service land located within State borders is exempt from State property taxes on the same constitutional basis. Similarly, States are prevented from making assessments against Postal Service land for local improvements. The Postal Service may be required to make tax-like payments based on the reasonable value of the services rendered or product provided regardless of the validity of the tax *per se*. Again, if you have a question about a State or local property tax or assessment against Postal Service land, seek guidance from assigned counsel.

Chapter 8

Special Categories of Contracts

8.2 Professional and Consultant Services

I. Scope of PH 8.2-II through 8.2-IX	8.2-1
II. Determining the Need for a Contract	8.2-1
III. Developing a Formal Requisition	8.2-2
IV. Publicizing the Requirement and Conducting the Selection Process	8.2-4
V. Conducting Negotiations	8.2-6
VI. Final Selection and Contract Award	8.2-11
VII. Contract Administration	8.2-11
VIII. Abbreviated Selection Procedures for Small Requirements	8.2-12
IX. Abbreviated Procedure for Multiple Repetitive Contracts	8.2-13

8.3 Information Systems

8.3.2 Policy

Further Procurement Guidance (8.3.2.c)	8.3-1
--	-------

8.4 Research and Development

8.4.4 Contracting Procedures

I. Using Research Announcements (8.4.4.a.2)	8.4-1
II. Developing Research Announcements (8.4.4.a.2)	8.4-1
Sample 1: Research Announcement Format	8.4-5
Sample 2: Research Interests Format	8.4-7
III. Numbering Research Announcements and Contracts in Response to Research Announcements (8.4.4.a.2)	8.4-3
IV. Preparing Responses to Research Announcement Inquiries (8.4.4.a.2)	8.4-3
Sample: Response Letter	8.4-12
V. Evaluating Research Announcement Proposals (8.4.4.a.2)	8.4-3
VI. Awarding Contracts Under Research Announcements (8.4.4.a.2)	8.4-4
VII. Procedure for Unsolicited Proposals (RESERVED)	8.4-4

8.6 Structured Contracts and Controlled Contracts

8.6.2 Policies and Procedures

Appendices and Supplements 8.6-1

8.1 Supplemental Policy and Procedure**8.1.2 Other Policy and Procedure Directives****Additional and Supplemental Procedures**

When you are involved in transactions related to those areas listed in PM Exhibit 8.1.2, you should follow the procedures in the following additional handbooks:

Architect/Engineer Services	–	Facilities Procurement Handbook
Construction	–	Facilities Procurement Handbook
Information Resources	–	Information Resources Procurement Handbook
Mail Transportation	–	Mail Transportation Procurement Handbook
Research & Development	–	Research Agreement Proposal Preparation and Contracting Guide

The Facilities Procurement Handbook and Mail Transportation Handbook are the primary procedural guides for those activities. Other handbooks and documents are supplemental to the Procurement Handbook and are published separately solely for convenience. The Research Agreement Proposal Preparation and Contracting Guide is contained within the Document Generation System (DGS).

Since additional and supplemental procedures provide internal guidance (sometimes called "housekeeping rules") not having the "force and effect of law," notice will not be published in the Federal Register.

Maintenance of additional and supplemental procedures has been delegated by the APMG, Procurement and Supply, to the Director, Office of Plans, Programs and Systems, Procurement and Supply Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, Washington, D.C. 20260-6201. Additions to, deletions from, and changes to the PH, its appendices, and its supplements are handled in accordance with procedures established by the Director.

8.2 Professional and Consultant Services

I. Scope of PH 8.2-II through 8.2-IX

Procedures for contracting for professional and consultant services, including studies, are essentially the same across the board. Therefore, the procedures presented in this section apply to all procurements of professional and consultant services, except for architect-engineer (A-E) services. The selection procedures for professional and consultant services as outlined in this section recognize the subjective nature of these services, but are optional. You may use the selection procedures in Chapter 2; however, special procedures with a statutory basis govern the competition and contractor selection phases of A-E buys. Accordingly, if you are contracting for A-E services you must use the Facilities Procurement Handbook.

Throughout this section, the term "professional services" is used as defined in PM 8.2.1.a. Technical services should be obtained in accordance with normal procedures in Chapters 2 and 4.

The procedures in PH 8.2-II through 8.2-VII address the six distinct phases in professional services contracting:

1. Determining the need for a contract and obtaining approval;
2. Developing a formal requisition that defines the contract scope;
3. Publicizing the requirement and selecting the organizations or individuals with whom negotiations will be conducted;
4. Conducting negotiations with the selected organizations or individuals;
5. Selecting the contractor and awarding the contract; and
6. Handling contract administration, including follow-up evaluation.

Each of these procedures applies to contracts estimated to exceed \$50,000. For contracts for which the fee is expected to be less than \$50,000, permitted abbreviations of the procedures are spelled out in PH 8.2-VIII. An abbreviated procedure for multiple repetitive contracts is provided in PH 8.2-IX.

II. Determining the Need for a Contract

Before submitting a formal requisition for professional services, the requesting office must determine whether contracting is appropriate. Generally, the Postal Service contracts for professional services only when the requirement is temporary, unique, geographically sensitive, or subject to other considerations that preclude satisfactory accomplishment of the work by Postal Service personnel.

Request for Approval

Personnel considering a professional services contract must initially prepare a request for authority to initiate a contract and submit it to the approving official named in Management Instruction (MI) AS-710-86-6, *Contracting for Consultant and Study Services*. The request must contain:

- A description of the work to be performed, citing the reasons why it is not feasible to accomplish it using Postal Service personnel;
- A preliminary cost estimate;
- Individuals recommended as members of the technical selection and negotiation teams;
- The proposed extent of competition;
- Recommended sources; and
- Any other data the approving official may require.

Approval with Instructions on Publicizing

Approved requests to contract are returned to the requesting office, which will then prepare a formal requisition.

The approval should indicate the extent of publicity to be given to the procurement. If the contract will involve highly specialized skills or work of major importance, the approving official should require synopsis in the *Commerce Business Daily* (CBD). If the work is routine and qualified companies are available locally, the approving official may authorize publicizing to be limited to the area in which the services are to be performed.

Requests for Noncompetitive Contracts

Technical personnel may recommend award to a specific company because they believe that company is the only one able to do the work. These recommendations must be reviewed thoroughly; the subjective nature of the professional services selection process provides opportunity for favoritism and bias. Both requesting office and contracting personnel must carefully consider representations that a noncompetitive contract is required, and challenge them when warranted. If there is any indication of favoritism or bias, the procurement should be publicized to find out whether there is in fact a bona fide sole-source situation. While technical personnel play the major role in determining whether prospective contractors have the necessary skills, the decision as to whether a sole-source contract is appropriate must be made by the APMG, Procurement and Supply Department (see MI AS-710-86-6).

III. Developing a Formal Requisition

Required Contents

The requisition must define the scope of the contract work. It must contain a proposed statement of work and related information for contractor selection and contract award. To provide an adequate basis for selecting a qualified contractor and structuring a sound contract, the requisition must:

1. Establish three types of requirements —
 - Technical,
 - Product, and
 - Contractor skills;
2. Recommend the most appropriate type of contract; and
3. Indicate whether the work can best be performed by an individual or an organization.

In addition, the requisition must contain a cost estimate and funding data, and must include the approved request to contract as an attachment.

Technical Requirements

Technical requirements must be established in sufficient detail to prevent the contractor from performing unnecessary work or spending time in developing criteria or standards that should already have been established by the Postal Service. For example, a contract for computer programming services should clearly identify the equipment on which the program will be run, the specific characteristics the end product must exhibit, and similar criteria. A contract for a transportation study should indicate routes, frequency, volumes to be carried, and other details. In contrast, a contract for real estate title searches need require only that the contractor identify who holds title to a property and what liens and covenants run against the title.

The care with which technical requirements are spelled out will have a direct effect on the parties' ability to negotiate a contract as well as on the acceptability of the services delivered.

Product Requirements

Similarly, the requisition must indicate specifically what the final product will be. For example, if it is a report, will it be an oral or a written report? What areas must be covered? Is the contractor required to make recommendations? Should there be limitations on the report's length? Other requirements, that tend to be overlooked, would include the format in which the report should be delivered (electronic or paper), the number of copies to be submitted, if paper, and whether interim reports are required.

The requisition should also contain schedules showing when interim and final deliveries are to be made.

Contractor Skills Requirements

In professional services contracting, identification of the contractor skills needed to perform the work is a crucial element. In preparing the requisition, the requesting office must answer such questions as: What specific technical skills are required? Do they include technical specialties (securities law, mechanical engineering, radiological services, and the like)? Are various skills involved, or does the work require only a single specialty?

In determining whether a contract requires professional or consultant services, the key element is whether *licensed* personnel are necessary. For some types of work, licenses are not required but may be desirable because of the Postal Service's intended end use of the product. For example, a report or testimony by a licensed individual is normally more influential than a report or testimony by an unlicensed one.

Another factor in determining contractor skills requirements is location. Many services (for example, real estate appraisal) require the contractor to have detailed knowledge about a geographic location. Also, if the contract will require extensive contact between the Postal Service and the contractor, it may be necessary that the contractor be located near the Postal Service administrative office.

Type of Contract

The requesting office is responsible for recommending in its requisition the type of contract to be awarded, but the contracting officer is responsible for the final determination of contract type.

What type of contract is appropriate depends on the level of detail on which the contract requirements can be spelled out. When the scope of the work can be clearly defined, and its performance therefore involves factors within the contractor's control, the contract should be fixed-price. When the contract will involve research and development or specialized studies that may advance the state of the art, however, performance is probably not within the contractor's control, and a time-and-materials contract or a type of cost-reimbursement contract should be used. When the contract will involve performance of an indefinite number of repetitive tasks (for example, for title searches) unit pricing should be used.

Another factor in selecting the type of contract is how the contractor will be paid. The most desirable method is to pay *only* for delivery of a specific item. If it is not practical to base payment on a specific delivery, it may be reasonable to expect the contractor to perform without progress payments. If progress payments *are* necessary, it is preferable to tie them to actual work accomplished rather than pay the contractor on a time-and-materials or a cost basis. When it is difficult to establish the contract outcome and the effort required to reach it, the contract should call for payment on a step-by-step basis (for example, payment for conducting an initial study, with the option, if the initial study is favorable, of negotiating further steps on a fixed-price basis).

Determination of Who Can Best Perform the Work—An Individual or an Organization

The requisition should also indicate whether the work can best be performed by an individual or an organization, and, if organizational support is desired, whether a large or a small organization is needed. If the contract is for a relatively small amount of money, for example, it will probably receive little attention from the management of a large, nationally based company but might receive top-management attention in a smaller company.

IV. Publicizing the Requirement and Conducting the Selection Process

On receipt of a formal requisition, the contracting officer will publicize the requirement and will initiate and oversee the selection, negotiation, and award processes.

Publicizing

In publicizing the requirements in the CBD or locally (see also PM and PH 3.2.2), the contracting officer must briefly identify the services sought, the skills believed to be required, and other details sufficient to enable firms to determine if they are qualified and interested in performing the work. Interested firms should be asked to submit their qualifications, their concept for accomplishing the work, a description of their current workload, and other data deemed necessary in selecting the best qualified offerors for initial negotiations.

Contractor Prequalification

In some cases, it is appropriate to prequalify contractors (see PM 3.1.6.c and PH 3.1.6-VII) for professional services. Prequalification is appropriate when the contract will involve the repetitive performance of tasks requiring essentially the same skills (for example, title searches, surveying, or teaching). Prequalification is not usually appropriate for one-time unique requirements, especially in rapidly changing fields such as computer programming or electronics. If prequalification is appropriate, the procurement office must establish and maintain a list of companies and individuals found qualified. The contracting officer must ensure that contract awards are rotated among those on the list—taking into account, however, differences in skills and pricing.

The Selection Process

Selection of professional services contractors, with the exception of small procurements (see PH 8.2-VIII, below) and repetitive work (see PH 8.3-IX, below), is a two-phase process:

1. Initial technical selection, which is performed primarily by a team of technical personnel; and
2. Contract negotiation, which is performed by a team of technical and contracting personnel, and which may take place in two phases—initial negotiations and final negotiations (see discussion in PH 8.2-V, below).

When the appropriate official approves a request for a professional services contract, he or she also appoints a technical selection team of three members and designates which member will be the team chairperson. Team members should be well-versed in the technical skills required in performing the work. To ensure impartiality insofar as possible, team members should be from offices other than the requesting office.

The negotiation team is appointed and chaired by the contracting officer. It must include at least one representative from the requesting office to ensure that discussions about the work accurately convey the office's requirements.

Responsibilities of the Technical Selection Team

The technical selection team establishes a list, or "slate," of the companies or individuals (at least three and usually four to six) it considers best qualified to perform the work. If the requirement has been publicized, the team will review the responses to make this determination. If the requirement has not been publicized, the team will establish the slate on the basis of files on contractors who have performed similar work, information from prequalification of contractors, information obtained from Federal agencies, and, on occasion, visits to offices of prospective contractors.

The team should give primary emphasis to the following factors (as applicable):

1. Experience, qualifications, and availability of the personnel proposed to perform the work;
2. Company experience, qualifications, and reputation;
3. Company size and how important the work will be to the company;
4. Prospective contractor's location if it has a bearing on qualification to perform the work and ease of contract administration;
5. Present workload of the company or individual;
6. Past record of performance for the Postal Service; and
7. Any other appropriate criteria

The technical selection team must prepare a report listing the companies or individuals found to be the best qualified to perform the work, and explaining why they have been selected. This report must be delivered to the negotiation team chairperson (the contracting officer).

V. Conducting Negotiations

Invitation to Negotiate

Final selection of a professional services contractor is usually made through in-person negotiations conducted by the negotiation team. To start the process, the negotiation team, assisted by the procurement office, prepares an invitation to negotiate. This document must describe the scope of the work and the Postal Service's requirements as fully and definitively as possible, based on the scope of work contained in the requisition. It must also specifically point out what information the Postal Service desires the offeror to present in negotiations.

Information required from the offeror should include:

1. A statement of the offeror's qualifications to do the work, including descriptions of similar projects completed successfully;
2. References on the *company's* qualifications (if applicable);
3. A chart showing the organization the company will use if it is selected to perform the work (if applicable);
4. Details on the *individual* or the *personnel* who will do the work (including resumes that specifically identify prior experience, when obtained, for whom the work was done, and references who may be contacted);
5. The offeror's concept for the accomplishing of the work, including any innovative approaches;
6. Identification of the office(s) where the work will be performed; and
7. Information on hourly labor rates and overhead rates, including breakdowns of overhead rates. (Generally, only rates, rather than proposed contract prices, are requested during initial negotiations, because a total price usually cannot be figured until the contractor and the Postal Service agree on the final scope of work and the conditions under which the work will be performed.)

The contractor should be required to submit this information before the initial negotiations. Having the information in advance gives the negotiation team an opportunity to go over the data and record their questions before the negotiations.

Scheduling of Negotiation Sessions

After the invitation to negotiate has been sent out, the contracting officer will contact the companies or individuals that have been slated and arrange a date and time for negotiations. No more than four sessions should be scheduled per day (two in the morning, two in the afternoon). Usually, the sessions will be about 90 minutes long, with 45 minutes allotted to the contractor to address the points stated in the invitation to negotiate, and the remaining 45 minutes reserved for Postal Service personnel to pose questions.

The contracting officer should advise the offerors of the facilities that will be available (for example, movie screen, easel with paper, marking pens, electrical outlets for projectors), the procedures to be followed, and the time allotted. They should also be informed of the number of persons that can be accommodated. (In some cases, the room must be sufficient to accommodate the Postal Service team and up to eight representatives of the offeror's organization.)

Preparation for Initial Competitive Negotiations

Preparation for professional services negotiations is similar to that required for any contract negotiation. All team members should review documentation received from the offerors and be familiar with the offerors' qualifications and rates. Before the negotiations, the Postal Service team must meet to review the contract scope and the skills required to perform the work. Then the team must develop an evaluation system, consistent with any published evaluation factors, that identifies evaluation criteria and the relative weight to be given to each. Usually, technical considerations, such as the offeror's proposed personnel and its experience and qualifications, will outweigh pricing. The evaluation system must provide a common basis for evaluating the offerors after initial negotiations.

Immediately before the negotiations, the chairperson should assemble the negotiation team to review the procedures to be followed and go over any last-minute details.

The Negotiation Session

At the designated time, the team will meet with the offeror's representatives. Following are guidelines for conducting the session.

1. Introductions

The chairperson should introduce the team members and briefly identify each member's background. The chairperson should remind the offeror of the time limits established for the meeting and then ask the offeror to proceed.

2. Oral Presentations by the Offeror

The offeror should be permitted to make a presentation in any manner it desires. However, if the offeror drifts away into matters of no interest to the Postal Service, the chairperson should ask the offeror to return to the subject at hand. Team members should avoid interrupting the presentation except to clarify points (for example, when a number stated is not clearly understood). When the offeror only partially addresses an area of interest, team members should keep notes but avoid interrupting until the question-and-answer period that follows.

Team members should pay particular attention to who makes the presentation for the offeror. Many professional organizations have competent salespersons who are capable of creating excellent impressions. Team members must direct their attention not to these salespersons but to those individuals who actually will perform the services required. Companies that use salespersons to make the presentation should receive lower ratings than those that have the personnel who will do the work make the major portion of the presentation.

3. Question-and-Answer Period

When an offeror completes its presentation, or when the allotted time has elapsed, team members should direct questions to the individuals who will be responsible for the matter addressed by the question. These questions should attempt to establish the offeror's qualifications, experience, and present capability to perform the work. In some instances, senior management personnel of the company may interrupt other representatives and answer the questions. If this occurs repeatedly, the offeror should usually be given a lower rating.

Postal Service team members should not hesitate to ask tough questions. They should not accept generalities as replies; a contractor that declines to provide specifics should be given a lower rating.

During the question-and-answer period, the team should satisfy itself that, if selected, the key members of the offeror's team will remain assigned to the contract as long as their skills are needed. The team should determine whether these personnel will be assigned to the contract full time and ascertain the status of work to which they are presently assigned. If they are to be assigned to other work during the Postal contract, the team should establish how the offeror will assure that they are available for Postal Service work. All offeror's representations must be accurately recorded and, when a contract is awarded, included as a part of the contract terms and conditions.

The team must also resolve any questions it has about the offeror's pricing data. While a final price normally is not discussed during initial negotiations, rates and pricing practices are, as they may be important factors in selecting firms for final negotiations.

4. *Wrap-Up*

At the end of the question-and-answer period, the chairperson should ask the offeror if it has any questions. Offerors will often ask how long it will be before they are told who has been selected—which is reasonable since the offeror must, in effect, keep its proposed team on standby until it receives notice of a final selection. The chairperson should be prepared to answer the question, and the Postal Service should be prepared to proceed as rapidly as possible with the selection.

Some offerors may ask the number and identity of offerors being considered. This information should *not* be made public. The offerors should be told *only* that the Postal Service is considering several offerors, all believed to be well qualified for the work.

Post-Negotiation Actions

1. *Ranking*

Following each negotiation session the team should meet privately to discuss the strong points and weak points of each offeror's proposal. As each session is completed, the team should rank the offerors interviewed in relation to one another (as number 1, 2, 3, and so forth). (If this is not done immediately after each session, it will be considerably more difficult to rank the companies accurately.) If an offeror is found to be unqualified, it should not be ranked, but only listed as "unqualified."

After the last negotiation session, the team should review its rankings, especially for the top three offerors. Sometimes, information obtained from offerors interviewed later in the process affects the rankings of offerors interviewed earlier. The team should agree on the best qualified offerors, all factors considered. Usually, this will narrow the field to two or three offerors.

2. *Reference Checks*

The team should then contact the references provided by the offerors in contention to verify the quality of their past work. These checks should be made by telephone, using a speaker device, so that all team members can ask questions and hear the responses. (Some individuals are reluctant to make comments in writing, especially if these comments are adverse.)

Questions asked of references should include the following:

- a. What type of work did the offeror perform?
- b. Which key individuals actually performed the work?
- c. Did the offeror provide a quality product?
- d. Was the product provided on time?
- e. Was the work performed for the agreed price?
- f. Did the offeror's performance create any administrative problems?
- g. Were there any disputes?
- h. Would you hire the offeror again to perform similar work?

Generally, only two references for each offeror need to be checked, if all of their comments are positive. However, if any derogatory comments are received, the team should check enough references to ensure that the information obtained reflects fairly on the offeror's organization and capabilities.

After checking references, the team should again review the offerors' qualifications and, if appropriate, adjust the rankings. On occasion, adjustment of the rankings may result in a company being dropped from the top-rated offerors. If another offeror is included as one of the top, its references must also be checked.

3. *Initial Negotiation Team Report*

Following reference checks, the team must submit to the contracting officer a report that conveys its findings and the overall ranking it has decided upon. On the basis of this report, the contracting officer will determine which offerors have a reasonable chance of obtaining the award—that is, it will establish the "competitive range," as discussed in PM and PH 4.1.5.g.2.

As provided in PM 4.1.5.g.2(c), the contracting officer must notify all those not in the competitive range that they are no longer under consideration.

Final Negotiations With One Firm

On occasion, the negotiation team members and the contracting officer may conclude that one offeror is so superior to the others under consideration that final negotiations need be conducted with only that offeror. Advance approval to conduct final negotiations with only one firm must be obtained from both the approving official and the APMG, Procurement and Supply.

Final Negotiations—Competitive

The negotiation team will initiate final negotiations with offerors in the competitive range. In general, the team, assisted by the contracting officer, will ask each offeror to present any additional technical data desired, provide the offeror with a proposed final statement of work, and request a detailed price proposal.

In some instances, price proposals and other data may be acceptable as submitted or acceptable with minor changes or clarifications. In these cases, the team may attempt to resolve outstanding matters by telephone and avoid the time and expense involved in face-to-face final negotiations.

The following matters are unique to negotiations of professional service contracts or, though common to other kinds of contracts, warrant particular attention.

1. Contract Scope

In the final negotiation sessions, the contract scope and the offerors' proposed approaches may be defined further. During the initial negotiations the offerors primarily address their capability to do the work and provide a general concept of how they anticipate accomplishing it. In the final sessions, the parties should address, in depth, what concepts are acceptable, the amount of effort the Postal Service considers reasonable for various phases of the work, and similar details. For long, complex studies, the parties should attempt to divide the work into phases. This approach is particularly effective when the work involves an effort that may extend the state of the art.

2. Contract Terms

During final negotiations, attention should be given to rights in data, payment provisions, and other contract provisions that could create post-award problems. As noted previously, it is desirable to base payments on specific negotiated elements of the work (for example, preliminary reports, interim reports, and final reports).

3. Postal Service Cost Estimate

If the scope of the work is further defined through the negotiation process, the negotiation team, with appropriate technical support, must revise its cost estimate. The estimate must be in sufficient detail to permit the team and the approving official to analyze the selected offeror's price and establish that it is reasonable.

4. Offerors' Price Proposals

The offerors should be required to submit their price proposals so as to give the negotiation team enough time to review the proposals in advance. The price proposals should be in the same format and detail as the Postal Service cost estimate; if they are not, it may be difficult to analyze them. Overhead costs should be broken down to permit analysis.

Price proposals may reflect misunderstandings about the scope of work or the schedule. In such instances, the negotiation team, with appropriate technical concurrence, may modify or revise the scope or schedule. Care must be taken to ensure that all agreements and understandings are confirmed in writing and written into the contract.

Payment for travel should not be included in lump sum prices. Travel should be limited to travel authorized in advance by the contracting officer; reimbursement should be made only for actual travel. Profit should not be allowed on travel, and overhead charges should be limited to costs reasonably associated with scheduling and billing for travel. Contractors should be advised of any travel cost limitations (for example, airfare limited to coach) and the documentation required to substantiate travel costs.

If the contract involves follow-on work that cannot be priced definitively when negotiations are conducted, the negotiation team must at least make sure that pricing data are established and agreed upon. This will keep the contractor from having an unacceptably strong negotiating position regarding the future work. (For example, a contract with a law firm for legal advice may require the law firm to provide support if the matter later goes to trial. In such cases, it is usually impracticable to select another law firm for the trial work, thus giving the contractor a negotiating advantage at that

time.) If it is not possible to agree on the price of follow-on services before contract award, the Postal Service should, at a minimum, ensure agreement on hourly rates, overhead rates, and similar pricing factors.

VI. Final Selection and Contract Award

Selection Report

When the team has concluded its final negotiations with all offerors in the competitive range, it must rank all the offerors that have been considered in order of preference (first, second, and so on). Then it must prepare a report supporting this ranking. The report must list the top-ranked offerors and the reasons for their ranking. For offerors not ranked in the top three, information must be provided on why each was found less qualified than the others. This information need not be extensive, but it must be sufficient to permit contracting personnel to explain to unsuccessful firms why they were not selected. When the report is completed, it must be forwarded to the approving official for review.

Approval of the Selection Report

The approving official may:

1. Approve the report as submitted;
2. Request additional information;
3. Reject the report and ask the technical and negotiation teams to consider additional offerors; or
4. Adjust the rankings.

The approving official may *not* direct the team to consider any specific offeror. If the team's recommendations are not accepted, the official may direct *only* that other offerors be considered.

If rankings are adjusted, the approving official must substantiate and document why the adjustment was made.

Once approved, the selection report is forwarded to the contracting officer who will then award a contract to the selected offeror.

VII. Contract Administration

Administration of professional services contracts differs little from administration of other kinds of contracts. The procedures stated in PH Chapter 6 should be followed.

The following discussion highlights areas of special concern in the case of most professional services contracts.

Constructive Changes

Because of the subjective nature of the product to be delivered under most professional contracts, contracting officer's representatives (CORs) must ensure that contractors are not required to do work beyond the contract requirements, and that work is not rejected when it reasonably satisfies the contract requirements. Most professional services contracts require the contractor to provide a study, report, analysis, or opinion. Typically, the extent of detail

required is not established with precision in the contract. Refusal to accept work as offered or requests for additional detail may constitute constructive changes to the contract.

Key Personnel

CORs should ensure that the work is being performed by the personnel the contractor represented as those who would do it. Any change should be reported immediately to the contracting officer. Of course, key personnel sometimes need to be replaced. Death, termination of employment, changes in technology, and other factors may necessitate the substitution of someone else.

All key personnel changes must be approved, in advance, by the contracting officer. Failure of the contractor to obtain this approval may be cause for termination of the contract under Clause 8-6, *Key Personnel*. Accordingly, Clause 8-6 must be included in the contract when contractor selection is based in large part on the qualifications of specific contractor personnel—as is the case in most professional services contracts.

Maintenance of Schedule

Many professional organizations lack effective management controls and fail to maintain contract schedules. CORs must carefully monitor progress to ensure that the work is proceeding as required. Any deviation from schedule should be brought immediately to the contractor's and the contracting officer's attention. Also, care should be taken to see that the contractor is not paid for work that has not been performed.

Performance Evaluation

Performance evaluation is important in professional services contracts. Written evaluation reports should be prepared and kept on file in the procurement office, to be considered when selecting contractors for future work.

In many instances, it is not possible to determine conclusively, at the time of delivery, whether a professional services contractor's work is adequate. For example, when the contractor submits its final product—usually a report in some form—it is possible to determine whether the report is reasonably complete, submitted on time, and accomplished within budget. However, it may not be discovered until a year or two later that the report's content was not satisfactory. For example, a study recommending that a certain type of computer be installed may be found unacceptable later, when the computer fails to satisfy Postal Service requirements.

Contracting officers should maintain a tickler file on all professional service contracts. Approximately one year after contract completion, a follow-up performance report should be obtained from the appropriate technical personnel.

Invoices

When unit pricing is used (for example, in a contract that establishes a unit price for each title search performed) the invoice need indicate only when the search was ordered, when the search was performed, and when the results were delivered.

VIII. Abbreviated Selection Procedures for Small Requirements

When the professional services contract is expected to be \$50,000 or less, the following abbreviations of the selection procedures described in PH 8.2-II through VII may be used:

1. The technical selection team and the negotiation team may be combined into one team.
2. As there will normally be no publicizing of the requirement, the team may make its initial selection of offerors based on records of past performance, including performance evaluations on file in the procurement office and recommendations from organizations that have procured similar services.
3. The number of companies or individuals considered may be limited to three.
4. Negotiation sessions may be conducted as telephone interviews, using speaker devices. However, if a company requests that it be interviewed in person, the company should generally be given that opportunity.

IX. Abbreviated Procedure for Multiple Repetitive Contracts

Some professional services are needed repetitively and are not so specialized as to warrant a contractor selection effort for each individual requirement. Examples are title searches, surveying, and laboratory testing. When technical personnel and the contracting officer agree that the services required fall into this category, multiple contractors may be selected through prequalification and initial negotiation. Pricing may be established by the Postal Service offering to pay a stated price (for example, \$50 per test) determined to be reasonable through initial negotiations with the individuals or firms. A basic ordering agreement is then awarded, and the services are acquired by issuing task orders.

Following receipt of an initial approval to contract, the contracting officer may enter into such agreements without further approvals, provided no individual order will exceed \$500 and all orders together will not exceed \$50,000.

Orders must be rotated among selected firms—taking into account, however, differences in skills and pricing.

When task orders are issued, the contractors are given a proposed final statement of work and asked to present technical data the Postal Service needs, as well as a detailed price proposal. They are also given all clauses that will be in the contract. Specific attention should be given to rights in data and payment provisions. Payments should be based, whenever possible, on specific negotiated elements of the work.

8.3 Information Systems

8.3.2 Policy

Further Procurement Guidance (8.3.2.c)

Detailed guidance on planning and conducting information systems procurements can be found in a supplement to this Procurement Handbook, the *Information Resources Procurement Handbook* [to be published under separate cover].

8.4 Research and Development**8.4.4 Contracting Procedures****I. Using Research Announcements (8.4.4.a.2)**

A research announcement (RA) is appropriate for research activities when the broadest possible approaches are sought and a conventional approach may stifle thinking.

Tasks

1. Examine the program requirement or area of interest to see if it calls for basic research, applied research, or development as defined in PM 8.4.1.b, 8.4.1.a, and 8.4.1.d, respectively.
2. If the request falls into one or more of the categories listed in Step 1, use the RA procedure when:
 - a. Using a conventional statement of work could result in unintentionally limiting the range of ideas, concepts, and research approaches;
 - b. Using a conventional solicitation would unintentionally exclude a source whose ideas, concepts, or expertise, should be included in any comprehensive review of research or development approaches; *or*
 - c. Evaluation will be performed by a peer review panel.

II. Developing Research Announcements (8.4.4.a.2)

1. Obtain a written request from the requisitioning activity, including:
 - a. Broadly defined areas of potential research interest. RAs may cover a single program but should cover as broad a research area as possible. Generally, they include many projects in a single program, which may result in contract awards through several offices.
 - b. Criteria and procedures that will be used to evaluate and select proposals for award. Typical criteria include:
 - (1) Overall scientific, technical, or socioeconomic merit of the proposal.
 - (2) Demonstrated expertise in the appropriate scientific fields.
 - (3) Experience and qualifications of the principal project personnel and the institution or corporation submitting the proposal.
 - (4) Potential contributions of the proposed project to the Postal Service.
 - (5) Realism of the proposed cost.
 - c. Personnel who will technically evaluate the proposals received in response to the RA.

- d. The proposal cut-off date. The RA may call for proposals submitted by a common date or leave submission dates open. In the latter case, proposals will be evaluated, and rejected or selected, as they are submitted. Otherwise, proposals must be submitted by the date specified to be considered for award.
2. Obtain approval from the APMG, Procurement and Supply, in accordance with PM 8.4.4.a.2(b).
3. Prepare an RA for publication in the *Commerce Business Daily* (CBD), following the Research Announcement Format shown as Sample 1 for this procedure. The announcement must contain the following information:
 - a. An identification number and a statement that "Responses must refer to Research Announcement No. _____."
 - b. A cut-off date or a statement reading, "This announcement is open and effective until rescinded by a revised announcement."
 - c. A description of the stated areas of potential research interest. When these descriptions are too lengthy to publish in the CBD (see PM 3.2.2 and relevant procedures), refer to the issue of *Research Interests* that provides these descriptions and the address of the office from which it is available.
 - d. The office and address from which prospective offerors can obtain the *Research Announcement Proposal Preparation and Contracting Guide*.
 - e. The address to which proposals must be sent.
 - f. Criteria for evaluating and selecting proposals, and the following statement: "No other evaluation criteria will be used in source selection. Technical and cost information will be evaluated at the same time. Proposals will be selected for award on a competitive basis after a peer or scientific review, or both."
 - g. A statement reading: "The cost of preparing proposals in response to this announcement is not an allowable direct charge to any contract. It is an allowable indirect cost as specified in the Postal Service *Procurement Manual* (PM) 5.2.2."
 - h. The name, telephone number, and office symbol from whom persons interested in submitting proposals may obtain generally available technical, contractual, and cost and pricing information.
 - i. A statement reading "Offerors are advised that only contracting officers are legally authorized to commit the Postal Service."
 - j. Any specialized proposal preparation guidelines, formats, or instructions.

Do not include in the announcement other solicitation provisions or contract clauses. You may include funding estimates, level of effort estimates, and the performance period contemplated.
4. Transmit the RA to the CBD. See the instructions at PH 3.2.2.
5. Prepare a *Research Interests* publication describing the areas of research. This publication is prepared using the Document Generation System (DGS). See Sample 2 for this procedure, "Research Interests Format."

6. Furnish the *Research Interests* publication and the *Research Announcement Proposal Preparation and Contracting Guide* upon request of prospective offerors. (The *Guide* is prepared using DGS.)

III. Numbering Research Announcements and Contracts in Response to Research Announcements (8.4.4.a.2)

A research announcement is essentially a solicitation. Therefore, number research announcements as you would number any other solicitation.

When numbering a contract awarded in response to a research announcement, use the solicitation number but change the ninth character in the number from "A" to "O." Because more than one contract may be awarded in response to a research announcement, assign a supplementary number to identify each contract, as you would in numbering a delivery or task order under a delivery order contract. Assign supplementary numbers sequentially as contracts are awarded in response to the research announcement.

IV. Preparing Responses to Research Announcement Inquiries (8.4.4.a.2)

When you receive a request from a prospective offeror seeking additional information in response to a research announcement published in the *Commerce Business Daily*, do the following:

1. Prepare an appropriate response letter. See the sample for this procedure, "Response Letter."
2. Include with the letter the following:
 - a. The issue of *Research Interests* corresponding to the research announcement; and
 - b. The *Research Announcement Proposal Preparation and Contracting Guide*.
3. Send the response package to the requestor.

V. Evaluating Research Announcement Proposals (8.4.4.a.2)

Tasks

1. Review all proposals received by the cut-off date (if any) in the RA. Check for completeness and conformity to the instructions in Sections A through C of the *Research Announcement Proposal Preparation and Contracting Guide*.

Notify offerors in writing of any curable errors or omissions, giving them a specific and reasonable period of time in which to respond.

Return to the offerors, with a letter of explanation, any late proposals that you determine will not be considered or any that materially deviate from the RA in form or content.

2. Prepare instructions and brief scientific or peer review evaluators on the evaluation procedure. Your instructions and briefings should cover the following points:
 - a. Proposals must be evaluated for scientific merit and for new and creative applications of scientific or engineering knowledge.

- b. Reviews must result in a written evaluation of a proposal against each criterion identified in the RA published in the *Commerce Business Daily* (CBD). Selection for award must be based primarily on individual scientific and technical merit.
 - c. Proposals must not be evaluated against each other because they are not submitted in accordance with a common work statement, and there may be widely varying approaches in a general research area.
 - d. Technical discussions regarding clarifications or modifications to the submitted proposal may be held directly between evaluators and the offeror's technical representatives. Written amendments, if necessary, may be submitted directly to the Postal Service technical evaluators by the offeror.
 - e. Projects rejected for lack of scientific or technical merit must be returned to the offeror directly by the evaluators with a letter of explanation.
3. Submit the proposals to the evaluators and require them to return a written package containing:
- a. The results of the technical evaluation, the proposal(s) selected for funding, and the outcome of technical negotiation;
 - b. A description of changes desired in any offeror's statement of work, including the basis for the changes;
 - c. The data rights identified on the Contract Data Requirements List (not required when the only deliverable is a technical report);
 - d. A purchase request for sufficient funds to cover each proposal found technically acceptable and selected for funding; and
 - e. A copy of each letter of explanation rejecting an offeror's proposal.

VI. Awarding Contracts Under Research Announcements (8.4.4.a.2)

Use a short form research contract (SFRC) (see PM 8.4.5) to award a contract based on a proposal received under an RA. The SFRC is composed of the signature page, a statement of work (either the offeror's proposal as revised during evaluation or a negotiated statement), and a listing of the clauses from the *Research Announcement Proposal Preparation and Contracting Guide* applicable to the particular contract. Incorporate the clause by listing its title, number, ordinal number in the *Guide*, and date. However, include in the contract the full text of any clause in which the wording has been modified.

VII. Procedure for Unsolicited Proposals

[reserved]

Sample 1 for PH 8.4.4-II, Developing Research Announcements (8.4.4.a.2)
Research Announcement Format

Research Announcement No. _____

1. The United States Postal Service invites proposals for research in support of the Postal Service Sciences Program in the general areas of:

- a. *Electronic and Material Sciences*, for example: information electronics including optical signal processing, electronic component and material sciences, microwave tubes, electromagnetics, novel electromagnetic and optical materials, metallic and nonmetallic materials, automated materials processing and nondestructive evaluation.
- b. *Life Sciences*, for example: toxic hazards, regulation of neuronal responsiveness, neural bases of behavior, cognitive processes, and visual and auditory information processing.
- c. *Mathematical and Information Sciences*, for example: control theory, computer science, artificial intelligence, computational, finite and physical mathematics, applied analysis, probability and statistics, mathematical optimization, signal processing and communication theory.

These areas of interest are described in detail in the Postal Service *Research Interests* publication, which is available upon request from _____. Use of this publication will help to ensure that proposals respond to Postal Service needs.

2. Proposals may be submitted on one or more of the above topics or on a specific portion of one topic. A proposer may submit separate proposals on various topics or different proposals on the same topic. The Postal Service does not guarantee an award in each topic area.
3. The Postal Service publishes the *Research Announcement Proposal Preparation and Contracting Guide* to aid prospective offerors in effective proposal preparation. For a copy, send a self-addressed label to:
4. Proposals will be evaluated and selected for award based on the following factors:
 - a. Overall scientific, technical, or socioeconomic merit of the proposal
 - b. Potential contributions of the proposed project to the Postal Service
 - c. The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral to achieving the proposal objectives

Sample 1 for PH 8.4.4-II, Developing Research Announcements (8.4.4.a.2)

Research Announcement Format (continued)

- d. The qualifications, capabilities, and experience of the principal investigator, team leader or key personnel
- e. Realism of the proposed cost and availability of funds
- 5. No other evaluation criteria will be used in source selection. Technical and cost information will be evaluated at the same time. Proposals will be selected for award on a competitive basis after a peer or scientific review, or both.
- 6. Do not send any brochures, visual aids, or materials except those needed to present a complete and effective proposal.
- 7. The Postal Service will protect the confidentiality of the proposal and any evaluations as far as practicable. Offerors may mark proposals with the legend in PM Provision A-7, *Restriction on Disclosure and Use of Data*. Proposals bearing a more restrictive legend will not be considered.
- 8. The cost of preparing proposals in response to this announcement is not an allowable direct charge to any contract. It is an allowable indirect cost as specified in PM 5.2.2.
- 9. Prospective offerors may request available technical, cost and pricing information from _____. Offerors are advised that only contracting officers are legally authorized to commit the Postal Service.
- 10. This announcement is open and effective until rescinded by a revised announcement.
- 11. Proposals may be submitted at any time to:

Responses must refer to Research Announcement No. _____.

Sample 2 for PH 8-4.4-II, Developing Research Announcements (8.4.4.a.2)

Research Interests Format

U.S. POSTAL SERVICE

Research Interests

Contents

Page

- I. Introduction
- II. Description of Research Interests
 - A. General Description
 - B. Detailed Description

Sample 2 for PH 8-4.4-II, Developing Research Announcements (8.4.4.a.2)
Research Interests Format (continued)

I. Introduction

U.S. Postal Service research programs are designed to increase the number of persons pursuing scientific and engineering projects of interest to the Postal Service; to increase investment in research equipment; to increase investment in basic scientific research; and to provide more opportunities for contacts between universities, industry, and the Postal Service to maximize the benefits of Postal-related research.

Each area of research interest will be funded for a maximum of _____ years at an annual level of up to _____ dollars. It is anticipated that most proposals will be considerably less than the _____ dollar maximum.

Areas of Interest

Proposals will be considered in the areas of interest described in II below. Detailed descriptions of these areas of interest are found on pages _____ through _____.

Proposal Information

Research and development proposals may include acquiring or building state-of-the-art instrumentation.

Proposals may include training for graduate/undergraduate students. However, only U.S. citizens will be eligible for student training grants, which will be awarded only for research-related work.

Each research proposal must include procedures for the exchange of information and scientific personnel between the research organization and the Postal Service.

Each proposal must address only one research topic. Offerors may submit more than one proposal on any topic, or a number of proposals each addressing a separate topic.

Proposals must be prepared in accordance with the Postal Service's *Research Announcement Proposal Preparation and Contracting Guide*.

Proposals must be received at _____ by close of business _____, and must not exceed 50 pages. Proposals received after that date will not qualify for the program and will be returned. Each proposal must be clearly identified on the outside of the package as a proposal submitted in response to this publication.

Submit proposals to:

Those proposals selected for award may be incrementally funded. Short form research contract procedures, as set forth in the Postal Service *Procurement Manual* (PM) at 8.4.5, will apply if the offeror is eligible.

Sample 2 for PH 8-4.4-II, Developing Research Announcements (8.4.4.a.2)
Research Interests Format (continued)

II. Description of Research Interests

A. General Description

1. (Title of subarea of research, if applicable)

BACKGROUND:

(Provide a brief background concerning the importance of the research area.)

SCIENCE TO BE ACCOMPLISHED:

(In general terms, describe the research work to be accomplished.)

POINT OF CONTACT:

(Provide the name, address, and telephone number of the Postal Service individual who can provide information regarding the research program.)

2. (Title of additional subarea, if applicable)

B. Detailed Description

[Insert a detailed description of the Postal Service's research interests. A sample description follows.]

[Sample]

B. DETAILED DESCRIPTION: TECHNOLOGIES FOR AUTOMATION

1. Robotics (ONR)

BACKGROUND: There are numerous opportunities for interdisciplinary research in robotics to advance the scientific basis for high performance sensor-based robotic manipulators and for autonomous mobile robots. Robotics research is multidisciplinary, posing challenging problems that span interests in mechanical engineering, materials, computer science, electrical engineering, mathematics, perceptual psychology, and neuroscience. Intensive basic research is vital in all of these disciplines to advance the scientific understanding necessary for improvements in robotics technology.

Sample 2 for PH 8-4.4-II, Developing Research Announcements (8.4.4.a.2)
Research Interests Format (continued)

Basic research in robotics has merit in identifying new problems that challenge and extend many scientific areas. There is a tremendous opportunity for technological revolution created by increasing the number of basic researchers tackling robotics problems. Benefits will come in the form of improved capabilities for the manufacture and maintenance of high performance equipment, in replacing humans by machines in production environments, and in contributing to a broad range of scientific and technology missions generally.

SCIENCE TO BE ACCOMPLISHED: There is a pressing need to understand how to design robots that can sense their environment using vision, touch, and acoustics and that can modify their behavior in response to perceived changes in conditions around them. Progress in this regard will be crucial to freeing robots from their current use as devices in fixed positions doing repetitive tasks, and would be accelerated by increasing research in the materials essential to sensors and in the automated techniques necessary to process the information that sensors provide. The role that artificial intelligence might play in that processing is potentially great; many open questions exist in this area that could be the basis for research in the design of autonomous robots. Contributions could come from biological models of computation for visual, tactile, and auditory processes.

Other areas of important research activity are in problems related to the design of dexterous manipulators with perceptual capabilities, so that the technology might advance beyond the use of robots with simple grippers to robots having perhaps better capabilities than the human hand for such activities as object recognition, inspection, and sorting. Recent research directed at building such manipulators has revealed many significant problems in the mathematics of geometric modeling and control theory.

Research leading to the design and efficient control of robotic arms is also needed, as is research leading to improvements in robot mobility. Specific issues that need to be addressed are how to create arms with a high power-to-mass ratio and how to ensure stability in the motion of robots moving over rough terrain.

POINTS OF CONTACT:

2. Artificial Intelligence (AI)

BACKGROUND: AI is emerging as an active scientific area with a vital role to play in many applications domains. It offers universities basic research opportunities of great depth and variety.

A vigorous research program in AI will focus on cross-disciplinary research involving computer science and cognitive science. Its objectives are to accelerate understanding of the ways in which humans organize knowledge for effective

Sample 2 for PH 8-4.4-II, Developing Research Announcements (8.4.4.a.2)

Research Interests Format (continued)

performance and problem solving, and to use this understanding to develop AI technology across many knowledge domains.

Principal among these are systems to facilitate teaching and training, expert systems, natural language understanding systems, systems for crisis alerting, and systems for performing situation assessment (including such subtasks as signal interpretation, information fusion, and the ability to infer plans of other agents and to generate plans and counterplans).

There is a serious shortage of PhD graduate students being cross-trained in the disciplines needed to provide an interface between understanding human knowledge representation and using this understanding in developing AI systems for use in a production environment.

SCIENCE TO BE ACCOMPLISHED: The AI research program will address the fundamental issues of (a) how knowledge can be acquired, represented, and organized; (b) how a system might learn from its experience, from examples, or from a teacher; (c) how to automate various types of reasoning, such as deduction, induction, reasoning by analogy, and common sense; (d) how to represent and reason about a dynamic world containing multiple agents, all of which have their own goals, capabilities, and incomplete or uncertain knowledge of the state of the world.

Insights into these issues, particularly those related to problems in knowledge acquisition and representation, can be gained by inter-disciplinary research in cognitive science and computer science. It is especially important to understand how human experts organize information and procedural knowledge for skilled performance and problem solving, and to develop efficient general techniques for analyzing specific cases of expert knowledge and skill.

POINTS OF CONTACT:

Sample for PH 8.4.4-IV, Preparing Responses to Research Announcement Inquiries (8.4.4.a.2)
Response Letter

[Date]

[Name and address of party requesting information]

Subject: [Research Announcement Number]

Dear _____:

Enclosed is a copy of the U.S. Postal Service's *Research Interests*, which provides a further explanation of the subject research announcement. Note that each of the programs in the publication has a point of contact should you require additional information or clarification.

Also enclosed is a copy of the *Research Announcement Proposal Preparation and Contracting Guide*. The *Guide* provides information on how to prepare an effective proposal in response to a Postal Service research announcement.

Thank you for your inquiry into the Postal Service Research Program.

Sincerely,

8.6 Structured Contracts and Controlled Contracts

8.6.2 Policies and Procedures

Appendices and Supplements

Procedures for Structured Contracts are shown in appendices to this PH or, where lengthy, are incorporated by this reference. The appendices are:

Appendix A	Procedures for Motor Vehicle Maintenance Contracting
Appendix B	Procedures for Motor Leasing Contracting
Appendix C	Procedures for Elevator Repair and Maintenance Contracting
Appendix D	Procedures for Cleaning Service Contracting
Appendix E	Procedures for Coin Operated Copier Contracting
Appendix F	Procedures for Contract Postal Unit (CPU) Contracting
Appendix G	Procedures for Vehicle Washing
Appendix H	Procedures for Vehicle Polishing

There are two supplements to this PH: the Food Services Contracting Handbook and the Information Resources Procurement Handbook, which will include procedures for structured contracting of telephone systems. They are published separately solely for convenience. Refer to PH 8.1.2.

Chapter 9

Patents and Data Rights

9.2 Patents and Data Rights

9.2.1 Acquisition of Patent Rights

- I. Determining Whether to Obtain Less Than Full Title to Patents [RESERVED]
- II. Negotiating Alternate Patent Agreements After Contract Award [RESERVED]
- III. Determining When the Postal Service Should Acquire Title to Inventions Developed Under Contract (PM 9.2.1.b) [RESERVED]
- IV. Granting Exclusive Licenses Under Postal-Owned Inventions [RESERVED]
- V. Deciding Whether to Include Provision 9-1, *Alternate Intellectual Property Rights Proposals*, in Solicitations (PM 9.2.1.e) [RESERVED]

9.3.2 Data Rights Acquisition Policy

- I. Negotiating Rights To Be Acquired for Computer Software Developed at Private Expense (PM 9.3.2.a) [RESERVED]
- II. When to Acquire Postal Purpose Rights [RESERVED]
- III. When to Acquire Rights Through Direct Licensing (PM 9.3.2.g.3) [RESERVED]
- IV. Determination of Improperly Marked Data (PM 9.3.2.d) [RESERVED]
- V. Determining When Data and Computer Software Are Developed at Private Expense (PM 9.3.2.c) [RESERVED]
- VI. Correcting Omitted Notices (PM 9.3.2.e) [RESERVED]
- VII. Determining When to Permit a Contractor to Claim Copyright in Data First Produced in the Performance of a Contract (PM 9.3.2.f) [RESERVED]
- VIII. Acquiring Commercial Software with "Shrink Wrap" License [RESERVED]

9.3.6 Acquisition of Rights in Computer Software

- I. When to Use the *Additional Data Requirements* Clause [RESERVED]
- II. Obtaining Rights for Software to Be Used in Microcomputers [RESERVED]
- III. Disclosing Modified Computer Software Pending Resolution Under the *Disputes* Clause [RESERVED]
- IV. Determining When to Modify, Adapt, or Combine Restricted Software for Minicomputers, Systems, and Mainframes [RESERVED]
- V. Negotiating for Source Code Rights for Software [RESERVED]
- VI. Developing a Data Requirements Information List (DR IL) [RESERVED]

9.2 Patents and Data Rights

9.2.1 Acquisition of Patent Rights

- I. Determining Whether to Obtain Less Than Full Title to Patents**
[RESERVED]
- II. Negotiating Alternate Patent Agreements After Contract Award**
[RESERVED]
- III. Determining When the Postal Service Should Acquire Title to Inventions Developed Under Contract (PM 9.2.1.b)**
[RESERVED]
- IV. Granting Exclusive Licenses Under Postal-Owned Inventions**
[RESERVED]
- V. Deciding Whether to Include Provision 9-1, *Alternate Intellectual Property Rights Proposals*, in Solicitations (PM 9.2.1.e)**
[RESERVED]

9.3.2 Data Rights Acquisition Policy

- I. Negotiating Rights To Be Acquired for Computer Software Developed at Private Expense (PM 9.3.2.a)**
[RESERVED]
- II. When to Acquire Postal Purpose Rights**
[RESERVED]
- III. When to Acquire Rights Through Direct Licensing (PM 9.3.2.g.3)**
[RESERVED]
- IV. Determination of Improperly Marked Data (PM 9.3.2.d)**
[RESERVED]

V. Determining When Data and Computer Software Are Developed at Private Expense (PM 9.3.2.c)

[RESERVED]

VI. Correcting Omitted Notices (PM 9.3.2.e)

[RESERVED]

VII. Determining When to Permit a Contractor to Claim Copyright in Data First Produced in the Performance of a Contract (PM 9.3.2.f)

[RESERVED]

VIII. Acquiring Commercial Software with "Shrink Wrap" License

[RESERVED]

9.3.6	Acquisition of Rights in Computer Software
--------------	---

I. When to Use the *Additional Data Requirements* Clause

[RESERVED]

II. Obtaining Rights for Software to Be Used in Microcomputers

[RESERVED]

III. Disclosing Modified Computer Software Pending Resolution Under the *Disputes* Clause

[RESERVED]

IV. Determining When to Modify, Adapt, or Combine Restricted Software for Minicomputers, Systems, and Mainframes

[RESERVED]

V. Negotiating for Source Code Rights for Software

[RESERVED]

VI. Developing a Data Requirements Information List (DR IL)

[RESERVED]

Chapter 10

Socioeconomic Policies

10.1 Small and Minority-Owned Businesses

10.1.1 General

I. General Guidance	10.1-1
II. Identifying and Soliciting Small Businesses	10.1-1
Checklist: Small Business Status Checklist	10.1-3
III. Protests Concerning Small and Minority-Owned Businesses	10.1-1

10.1.4 Contracting with Minority-Owned Businesses

Guidelines for Contracting with Minority-Owned Businesses	10.1-2
Checklist: Minority Business Status Checklist	10.1-5

10.1.5 Subcontracting with Small and Minority-Owned Businesses

Reporting	10.1-2
Exhibit: Quarterly Report of Small and Minority-Owned Business Subcontracts	10.1-7

10.2 Labor Policies

10.2.3 Contract Work Hours and Safety Standards Act

Handling Complaints and Inquiries	10.2-1
---	--------

10.2.5 Walsh-Healey Public Contracts Act

I. Determining Whether an Offeror Is a Manufacturer or Regular Dealer (10.2.5.i)	10.2-1
Checklist: Is the Offeror a Manufacturer?	10.2-7
II. Supplying the Walsh-Healey Letter and Poster	10.2-2

10.2.6 Fair Labor Standards Act of 1938

Handling Inquiries	10.2-2
--------------------------	--------

10.2.7 Equal Employment Opportunity

I. Affirmative Action Programs	10.2-2
II. Obtaining the EEO Poster (10.2.7.e)	10.2-3
III. Handling Inquiries and Complaints (10.2.7.f and g)	10.2-3

10.2.10 Service Contract Act

I. Determining Whether a Contract Action Is Covered by the Act	10.2-3
--	--------

II. Satisfying the Requirement to Obtain Wage Determinations (10.2.10.e)	10.2.5
Exhibit 1: SF 98, Notice of Intention to Make a Service Contract and Response to Notice	10.2-8
Exhibit 1: Instructions for SF 98	10.2-9
Exhibit 2: SF 98A, Attachment A	10.2-10
Exhibit 2: Instructions for SF 98A, Attachment A	10.2-11
III. Other Service Contract Act Requirements	10.2-5
Exhibit 1: SF 99, Notice of Award of Contract	10.2-12
Exhibit 2: Instructions for SF 99	10.2-13
10.2.11 Employment of the Handicapped	
Obtaining the Department of Labor Notices (10.2.11.c)	10.2-6
10.2.12 Veterans	
Obtaining the Department of Labor Notices	10.2-6
10.3 Buy American Policy	
10.3.2 Supplies	
Implementing the Postal Service's Buy American Policy	10.3-1
Illustration: Application of the 6 Percent Buy American Differential	10.3-3
10.4 Clean Air and Clean Water Act	
10.4.2 Requirements	
Identifying Violators	10.4-1

10.1 Small and Minority-Owned Businesses**10.1.1 General****I. General Guidance**

The Small Business Administration (SBA) rules and regulations are not binding on the Postal Service and do not apply to it. Title 13 of the Code of Federal Regulations (CFR) should be used only for guidance on method. If you have a question about these procedures, direct it to the Procurement Policies and Programs Division at Headquarters. **DO NOT CALL THE SBA.**

II. Identifying and Soliciting Small Businesses

1. Look up the four-digit Standard Industrial Classification (SIC) code that which best describes the product(s) or service(s) being procured. These SIC codes are found in Title 13, Code of Federal Regulations, Part 121.2 (13 CFR 121.2). In cases where the choice of an SIC code is unclear, the guidance in 13 CFR 12.1.5 (b) (1) may help you make a decision.
2. Determine from the SIC code(s) which small business size standard (based upon annual revenues or numbers of employees) applies to the product(s) or service(s) to be procured.
3. State the size standard in the solicitation.
4. Use the market research practices described in PM and PH 2.1.2 to locate small businesses that can provide the products or services.
5. Verify that each small business identified or submitting a proposal meets the conditions for a small business in PM 10.1.1.b.1. Small business status is generally a matter of self-certification. Use the checklist for this procedure, "Small Business Status Checklist," only if a protest is received concerning an offeror's or subcontractor's small business status.
6. Add qualifying businesses to the procurement office's solicitation mailing list, and send them solicitations for appropriate requirements.

III. Protests Concerning Small and Minority-Owned Businesses

If a protest is received concerning any procedure used in soliciting or awarding a contract to a small or minority-owned business, it should be treated according to PM and PH 4.5.

In addition, information from the Small Business Status Checklist (the checklist for PH 10.1.1-II) or the Minority Business Status Checklist (the checklist for PH 10.1.4) may be necessary to evaluate the merits and circumstances of many protests.

10.1.4 Contracting with Minority-Owned Businesses

Guidelines for Contracting with Minority-Owned Businesses

Market Research

The market research practices described in PM and PH 2.1.2 can help you locate minority-owned businesses that can provide products or services needed by the Postal Service. You can also ask your local SBA office to identify minority-business sources and to provide information on their qualifications and capabilities. Becoming knowledgeable of minority sources and their capabilities will help you in identifying when goods and services are available in needed quantities from minority-owned firms at competitive prices.

Verification of Minority-Owned Status

Minority status is largely a matter of self-certification. However, if a question is raised about the status of a firm identified or submitting a proposal as a minority-owned business, you will need to verify—

1. That the firm is indeed at least 51 percent minority-owned; *and*
2. That the firm's management and day-to-day business operations are actually controlled by a minority party or parties.

You can use the checklist for this procedure, "Minority Business Status Checklist," in making your determination.

10.1.5 Subcontracting with Small and Minority-Owned Businesses

Reporting

Each contractor whose contract contains Clause 10-2, *Small and Minority-Owned Business Subcontracting Requirements*, must submit a quarterly report to the contracting officer describing all subcontract awards to small or minority-owned businesses. The exhibit for this procedure, "Quarterly Report of Small and Minority-Owned Business Subcontracts," shows the format to be used.

The contracting officer must compile all reports received from contractors into a comprehensive quarterly report stating the total number and dollar amount of subcontracts awarded to small and minority-owned businesses. The comprehensive report must be submitted to the General Manager, Procurement Policies and Programs Division, Procurement and Supply Department.

Checklist for PH 10.1.1-II, Identifying Small Businesses
Small Business Status Checklist

SMALL BUSINESS STATUS CHECKLIST

Use the following list of items only if a protest is received concerning the small business status of an offeror or subcontractor.

1. Confirm that the size of the business qualifies it as a small business (see PM 10.1.1.b.1).
2. Confirm that the small business is not an "affiliate" of a larger business or affiliated in such a way that it constitutes part of a larger business.
 - a. Evaluate stock ownership of the business to determine who has the controlling interest. Controlling interest should be held by individuals, not a larger business or persons primarily affiliated with a larger business.
 - b. Evaluate who controls the business. Every business is considered to have one or more parties who directly or indirectly control or have the power to control. In particular, examine the business's bylaws to determine if a minority stock interest or other involvement by a larger concern or others constitutes effective control, which would disqualify the business as a small business.

Example: A party owning 50 percent of the business voting stock would have negative power to control the business because he or she can block any action of the other stockholders. Also, the corporation bylaws may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties has the power to control a business.

If ownership of a business concern's voting stock is widely distributed, then management (that is, its corporate officers) is deemed to be in control.

Example: A corporation's officers and directors own 40 percent of the concern's voting stock, but no officer or director owns a block sufficient to give him or her control or the power to control. The remaining 60 percent is widely distributed; no individual stockholder owns more 10 percent. Management controls this firm.

- c. Examine stock options, convertible debentures, and agreements to merge which may affect ownership within a reasonably short time after a size determination. Treat stock options, convertible debentures, and agreements to merge as though they were already exercised, and evaluate the resulting patterns of ownership and control.

Example: If company A holds an option to purchase a controlling interest in company B and the option can be exercised at any time by company A, treat them as though company A had exercised its option and become owner of a controlling interest in company B. If company A has entered into an agreement to merge with company B in the future, treat them as though the merger had taken place.

Checklist for PH 10.1.1-II, Identifying Small Businesses
Small Business Status Checklist (continued)

- d. Determine whether common or interlocking management with a larger concern exists. When officers, directors, employees, or principal stockholders of one concern serve as the working majority of the board of directors or officers of another concern, the two are affiliated.
- e. Determine whether facilities or employees are shared with another business in such a way that they constitute a single large business—particularly if they were formerly affiliated. Firms may not split up "on paper" to qualify as small businesses.
- f. Determine whether the business is newly organized by former officers, directors, principal stockholders, or key employees of a larger business in the same or related fields. If so, carefully examine any ties, formal or informal, to the larger business.
- g. Determine whether any contractual relationships and joint venture arrangements with other concerns might result in the effective formation of a larger business. Ask prospective offerors whether they are forming a joint venture for the sole purpose of this procurement. If they are, treat the joint venture as a single business entity in determining who controls its management, and treat the parties as affiliates for the purposes of establishing small business eligibility.

Checklist for PH 10.1.4, Contracting with Minority-Owned Businesses
Minority Business Status Checklist

MINORITY BUSINESS STATUS CHECKLIST

Use the following list of items if a question is raised concerning the minority-owned and -controlled business status of an offeror or subcontractor.

1. Confirm that the business is in fact a minority-owned business activity, conducted by one or more members of a socially and economically disadvantaged minority group (see PM 10.1.1.b.4).
2. Confirm that the minority-owned business is not an "affiliate" of a nonminority business or affiliated in such a way as to constitute a part of a nonqualifying business.
 - a. Evaluate stock ownership of the business to determine who has the controlling interest. Controlling interest should be held by minority individuals, and should be at least 51 percent of voting stock.
 - b. Evaluate the degree of management and control of the business by socially and economically disadvantaged minority persons. Every business has one or more parties who directly or indirectly control or have the power to control the business.
 - c. Evaluate the minority-owned firm's bylaws to determine whether stock interest held (or other involvement) by nonminority individuals or parties gives them effective control, which would disqualify it as minority-owned, -operated, and -controlled. If ownership of a business concern's voting stock is widely distributed, 51 percent must be owned by minority persons who are designated as socially and economically disadvantaged.
 - d. Examine stock options, convertible debentures, and agreements to merge which may affect ownership within a reasonably short time after a firm certifies that it is minority-owned and -operated.

Example: If company A (a nonminority concern) has an option to buy a controlling interest in company B (a minority-owned concern) and the option can be exercised at any time by company A, treat them as though company A had exercised its option and now owned a controlling interest in company B. If company A has entered into an agreement to merge with company B in the future, treat them as though the merger had taken place.

- e. Determine whether common or interlocking management with a nonminority-owned concern exists. When the officers, directors, employees, or principal stockholders of a nonminority concern serve as the working majority of the board of directors or officers of a minority-owned concern, the two are affiliated. To qualify, the affiliates together must be at least 51 percent minority-owned, and minority-managed on a day-to-day basis.
- f. Determine whether facilities or employees are shared with a nonminority-owned and -operated concern to such an extent that the firms together constitute a single nonminority business—particularly if they were formerly affiliated.

Checklist for PH 10.1.4, Contracting with Minority-Owned Businesses
Minority Business Status Checklist (continued)

- g. Determine whether the business is newly organized, formed by former officers, directors, principal stockholders, or key employees of a nonminority business in the same or related fields who are members of a socially and economically disadvantaged minority group. If so, carefully examine any ties, formal or informal, to the other business. Is the new business truly minority-operated and -controlled?
- h. Determine whether contractual relationships or joint venture arrangements with other concerns give effective control to a business entity that would not qualify for minority status for the purposes of the procurement.

Exhibit for PH 10.1.5, Subcontracting with Small and Minority-Owned Businesses
Quarterly Report of Small and Minority-Owned Business Subcontracts

**QUARTERLY REPORT OF SMALL AND MINORITY-OWNED BUSINESS
SUBCONTRACTS**

Totals for the Period _____ to _____

	Small Business Nonminority		Minority Business		TOTAL	
	No.	\$	No.	\$	No.	\$
Number of Sub- Contracts						
Subcontracts Awarded						

Instructions

1. Separate the statistics for small business firms from those for minority firms. Minority firms of small business size should be reported in the Minority Business section and not in the Small Business section.
2. You must report both the total number of firms in each category to which you issued subcontracts or purchase orders AND the total number of subcontracts and purchase orders issued. Report all subcontracts and purchase orders regardless of the amount.
3. Submit this report to the contracting officer at the end of each calendar quarter until the contract is entirely completed.
4. Do not report subcontracts or purchase orders issued and reported in previous quarters. Report only those issued during the calendar quarter covered by the report.

**THIS REPORT IS DUE 10 CALENDAR DAYS AFTER THE END OF EACH
CALENDAR QUARTER, OR:**

JANUARY 10

JULY 10

APRIL 10

OCTOBER 10

Contractor _____

Contract Manager _____

Address _____

Signature _____

City-State-Zip _____

Date _____

10.2 Labor Policies**10.2.3 Contract Work Hours and Safety Standards Act****Handling Complaints and Inquiries****Contract Work Hours Standards**

Direct complaints of violations and related inquiries to the Wage and Hour Division of the Department of Labor, which is responsible for enforcement. The addresses and telephone numbers of area and regional offices are available from the national office. The address is:

Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

Telephone: (202) 523-7541

Safety Standards

Direct complaints and inquiries to the Occupational Safety and Health Administration (OSHA) of the Department of Labor, which is responsible for enforcing occupational safety and health laws and regulations. The addresses and telephone numbers of OSHA area and regional offices are available from the national office. The address is:

Office of Information
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

Telephone: (202) 523-8151

10.2.5 Walsh-Healey Public Contracts Act**I. Determining Whether an Offeror Is a Manufacturer or Regular Dealer
(10.2.5.i)**

Do not rely on an offeror's representations that it is a manufacturer or regular dealer if:

1. You have knowledge that raises questions about the validity of the representations;
2. A protest has been lodged by another offeror, challenging the offeror's status as a manufacturer or regular dealer;
3. Your office has never before awarded the offeror a contract subject to the Walsh-Healey Act; or

4. A preaward survey or investigation of the offeror's operations has indicated that the offeror may not qualify.

To determine whether the offeror qualifies, refer, as appropriate, to either the checklist for this procedure, "Is the Offeror a Manufacturer?", or the requirements for regular dealers set forth in PM 10.2.5.g.2. Also see the criteria set forth in 41 CFR 50-201 and 41 CFR 50-206.

II. Supplying the Walsh-Healey Letter and Poster

The letter and poster (WH Publication 1313) you must give the contractor to display at its place of business are available from:

Information Office
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

Telephone: (202) 523-8743

10.2.6 Fair Labor Standards Act of 1938
--

Handling Inquiries

Direct inquiries from employees, offerors, Postal Service personnel, or others to the Area Director or Regional Administrator of the Wage and Hour Division, U.S. Department of Labor. The addresses and telephone numbers of the appropriate Wage and Hour Division area and regional offices are available from the national office. The address is:

Administrator
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

Telephone: (202) 523-8305

10.2.7 Equal Employment Opportunity
--

I. Affirmative Action Programs

PM 10.2.7.d.1 requires development of written affirmative action programs (AAPs) by prime contractors and subcontractors with 50 or more employees *and* (a) a contract or subcontract of \$50,000 or more or (b) Government bills of lading that in any 12-month period total, or can reasonably be expected to total, \$50,000 or more.

That means that an AAP is required when a firm with 50 or more employees receives or is expected to receive during a 12-month period—

1. A series of contracts or subcontracts that total \$50,000 or more; or
2. Orders under indefinite-delivery contracts or ordering agreements that total \$50,000 or more.

II. Obtaining the EEO Poster (10.2.7.e)

You may obtain the required poster "Equal Opportunity Is The Law" from:

Office of Information
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

Telephone: (202) 523-8743

OR

Office of Information
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20507-0001

Telephone: (202) 634-6922
or 1-800-USA-EEOC (for 50 or fewer copies)

III. Handling Inquiries and Complaints (10.2.7.f and g)

Direct inquiries or complaints from employees, contractors, Postal Service personnel, or others to the nearest area or regional office of the Office of Federal Contract Compliance Programs (OFCCP). The addresses and telephone numbers of the appropriate OFCCP area and regional offices are available from the national office. The address is:

Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

Telephone: (202) 523-9430

10.2.10 Service Contract Act

I. Determining Whether a Contract Action Is Covered by the Act

The Service Contract Act establishes standards for minimum compensation and safety and health protection for employees working for contractors and subcontractors under service contracts. Service contracts covered by the Act require a wage determination by the Wage

and Hour Division, U.S. Department of Labor, not only before award but also before modification (in certain cases) or renewal. However, service contracts of less than \$2,500 are not covered, and there are numerous exemptions. Use the guidelines below to determine whether your contract action is covered. Consult 29 CFR 4 for more detailed explanations of the Act and regulations.

Guidelines for Service Contract Act Coverage

A service contract is covered if it meets all of the following criteria:

1. Its principal purpose is to furnish services, as opposed to supplies (covered by the Walsh-Healey Public Contracts Act) or construction (covered by the Davis-Bacon Act). See 29 CFR 4.111, 130-4.131, and 4.142.
2. The services to be furnished are not exempt under either the provisions of the Act, as amended, or findings by the courts or the Secretary of Labor. Exemptions are listed in PM 10.2.10.b. They are discussed in more detail in 29 CFR 4.115-4.123 and 4.134.

You should become familiar with the following three exemptions, which pertain specifically to the Postal Service.

- a. Contracts whose principal purpose is the operation of contract Postal units. This exemption is statutory.
 - b. Contracts with common carriers for mail transportation by rail, air (except air-taxi), bus, or ocean vessel on regularly scheduled runs over established routes, when mail accounts for an "insubstantial portion" of the revenue. This exemption was granted by the Secretary of Labor "to avoid serious impairment of the conduct of Government business." (See 29 CFR 4.123(d)(1).)
 - c. Contracts for mail service with an individual owner/operator, when the owner/operator does not expect (at the time of award) to hire service employees under the contract except for short vacations or unexpected contingencies or emergencies, such as illness or accident. This exemption was also granted by the Secretary of Labor for the same reason as b above. (See 29 CFR 4.123(d)(2).)
3. The services are to be furnished in the U.S. See 29 CFR 4.112.
 4. The services are to be furnished through the use of service employees. The definition of service employees in the Act excludes bona fide executive, administrative, or professional employees (see definition in 29 CFR Part 541) but includes technicians and skilled tradespeople, even though they may be highly paid. See 29 CFR 4.113, and 4.150-4.156.
 5. The contract is:
 - a. A new award exceeding \$2,500;
 - b. A renewal of an existing contract exceeding \$2,500;
 - c. A modification of an existing contract to exceed \$2,500; or
 - d. An indefinite-delivery contract or ordering agreement, unless aggregate orders will not exceed \$2,500.

See 29 CFR 4.104, 4.141-4.142, and 4.144.

II. Satisfying the Requirement to Obtain Wage Determinations (10.2.10.e)

You must request wage determinations for covered service contracts at least 60 days (30 days for unanticipated requirements) before taking any of the following actions:

1. Issuing a competitive solicitation;
2. Beginning noncompetitive negotiations;
3. Allowing exercise of an option to renew;
4. Extending a contract;
5. Issuing a modification that will put the amount of a noncovered contract over \$2,500.

When a service contract not previously covered is modified to exceed \$2,500, you must immediately request a wage determination.

To request a wage determination, use Standard Form SF 98, *Notice of Intention to Make a Service Contract and Response to Notice*, and (if needed) SF 98a, *Attachment A*, which is used to specify the numbers and classes of service employees expected to perform work under the contract. These forms are available from the Area Supply Centers or from GSA Supply Stores. Exhibits 1 and 2 for this procedure provide a sample of the forms, followed by instructions for completion.

Mail the completed forms to:

Administrator
Wage and Hour Division
U.S. Department of Labor
Washington, DC 20210-0001

Telephone: (202) 523-7568

Multiyear Contracts

You must request a new wage determination for a multiyear contract at the end of every two years. File a new SF 98, and an SF 98a if needed, no sooner than 120 days nor later than 60 days before the anniversary of the date on which the contractor began work under the contract. See 29 CFR 4.145 (b).

III. Other Service Contract Act Requirements

Notice of Award of Contract

When you award a service contract, you must file SF 99, *Notice of Award of Contract*, with the Wage and Hour Division, U.S. Department of Labor. This form is available from the Area Supply Centers or the GSA Supply Stores. See the exhibit for this procedure for a sample and instructions for completion.

Mail the form to the address given for SF 98 and SF 98a in PH 10.2.10-II, above.

Subcontracts

Prime contractors whose service contracts are covered by the Act must include the Service Contract Act clauses in subcontracts for services. Subcontractors must pay minimum wages and fringe benefits applicable to the prime contract and abide by all provisions of the Act.

10.2.11 Employment of the Handicapped

Obtaining the Department of Labor Notices (10.2.11.c)

You may obtain the required notices (posters) from the Equal Employment Opportunity Commission (EEOC) or the Office of Federal Contract Compliance Programs (OFCCP):

Office of Information
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20507-0001

Telephone: (202) 634-6922
or 1-800-USA-EEOC (for 50 or fewer copies)

OR

Office of Information
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

Telephone: (202) 523-8743

10.2.12 Veterans

Obtaining the Department of Labor Notices

You may obtain the required notices (posters) from:

Office of Information
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

Telephone: (202) 523-8743

OR

Office of Information
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20507-0001

Telephone: (202) 634-6922
or 1-800-USA-EEOC (for 50 or fewer copies)

**Checklist for PH 10.2.5-I, Determining Whether an Offeror Is a Manufacturer or Regular Dealer
Is the Offeror a Manufacturer?**

IS THE OFFEROR A MANUFACTURER?

1. An offeror can be considered an *established manufacturer* of the type of item being purchased (PM 10.2.5.g.1(a)) if—
 - a. It owns, operates, or maintains a factory or establishment that produces the type of item on the premises; *and*
 - b. It will perform on its own premises the manufacturing operations required under the contract.
2. An offeror may qualify as a manufacturer if it is new in the field (PM 10.2.5.g.1(b)) but it—
 - a. Has made all necessary prior arrangements and definite commitments for manufacturing space, equipment, and personnel to perform the necessary manufacturing operations on its own premises;
 - b. Has not been set up solely to produce on the Postal Service contract, and its operations will not be terminated upon completion of that contract;
 - c. Has established arrangements for production on a continuing basis of the particular materials, supplies, or equipment desired by the Postal Service; *and*
 - d. Has documentation to prove that necessary written, legally binding, arrangements or commitments were made before award. (Acceptable documentation is specified in 41 CFR 50-206.51(c)(2).)

Exhibit 1 for PH 10.2.10-II, Satisfying the Requirement to Obtain Wage Determinations
SF 98, Notice of Intention to Make a Service Contract and Response to Notice

Rev. Feb. 1973 U.S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION	NOTICE OF INTENTION TO MAKE A SERVICE CONTRACT AND RESPONSE TO NOTICE <i>(See Instructions on Reverse)</i>	A 1082022									
MAIL TO: Administrator Wage and Hour Division U.S. Department of Labor Washington, D.C. 20210		2. Estimated solicitation date (use numerals) <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Month</td> <td style="width: 33%;">Day</td> <td style="width: 33%;">Year</td> </tr> </table> 3. Estimated date bids or proposals to be opened or negotiations begun (use numerals) <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Month</td> <td style="width: 33%;">Day</td> <td style="width: 33%;">Year</td> </tr> </table> 4. Date contract performance to begin (use numerals) <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Month</td> <td style="width: 33%;">Day</td> <td style="width: 33%;">Year</td> </tr> </table>	Month	Day	Year	Month	Day	Year	Month	Day	Year
Month	Day	Year									
Month	Day	Year									
Month	Day	Year									
5. PLACE(S) OF PERFORMANCE 		6. SERVICES TO BE PERFORMED (describe) 									
7. INFORMATION ABOUT PERFORMANCE A. ☐ Services now performed by a contractor B. ☐ Services now performed by Federal employees C. ☐ Services not presently being performed											
8. IF BOX A IN ITEM 7 IS MARKED, COMPLETE ITEM 8 AS APPLICABLE											
a. Name and address of incumbent contractor 		b. Number(s) of any wage determination(s) in incumbent's contract 									
c. Name(s) of union(s) if services are being performed under collective bargaining agreement(s). Important: Attach copies of current applicable collective bargaining agreements 		RESPONSE TO NOTICE <i>(by Department of Labor)</i> A. ☐ The attached wage determination(s) listed below apply to procurement. B. ☐ As of this date, no wage determination applicable to the specified locality and classes of employees is in effect. C. ☐ From information supplied, the Service Contract Act does not apply (<i>see attached explanation</i>). D. ☐ Notice returned for additional information (<i>see attached explanation</i>). Signed: _____ <i>(U.S. Department of Labor)</i> <i>(Date)</i>									
9. OFFICIAL SUBMITTING NOTICE <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">SIGNED:</td> <td style="width: 50%;">DATE</td> </tr> <tr> <td style="height: 30px;"></td> <td></td> </tr> <tr> <td style="width: 50%;">TYPE OR PRINT NAME</td> <td style="width: 50%;">TELEPHONE NO.</td> </tr> </table>			SIGNED:	DATE			TYPE OR PRINT NAME	TELEPHONE NO.			
SIGNED:	DATE										
TYPE OR PRINT NAME	TELEPHONE NO.										
10. TYPE OR PRINT NAME AND TITLE OF PERSON TO WHOM RESPONSE IS TO BE SENT AND NAME AND ADDRESS OF DEPARTMENT OR AGENCY, BUREAU, DIVISION, ETC. 											

98-103

**Exhibit 1 for PH 10.2.10-II, Satisfying the Requirement to Obtain Wage Determinations
SF 98, Notice of Intention to Make a Service Contract and Response to Notice (continued)**

Instructions for SF 98

- Item 1.* The preprinted number (notice number) appears here for identification and control purposes. Refer to this number in contacting the Department of Labor (DOL) regarding an individual notice.
- Item 2.* Enter the estimated solicitation date.
- Item 3.* Enter the date bids or proposals are expected to be opened or negotiations started.
- Item 4.* Enter the date contract performance is expected to begin.
- Item 5.* Enter the place of performance if it is fixed and known specifically. Also enter the appropriate city, county, and State. If performance will be at several known places, attach a list of those places. If the contract is for transportation services between locations, enter the city, county, and State of origin and of destination.
- Item 6.* Describe the services to be performed so that it will be clear what type or types of services are called for by the contract. In many instances, simple entries will be adequate—for example, "custodial and janitorial services at Postal facilities in Topeka, Kansas."
- Item 7.* Mark the appropriate box from among the three options: services now performed by a contractor, services now performed by Federal employees, or services not presently being performed.
- Item 8.* If the services are now performed by a contractor, indicate in 8a the name and address of the incumbent (current) contractor and in 8b indicate the numbers of any wage determinations made a part of the incumbent's contract. Item 8c applies only if any of the services are now being performed by the incumbent contractor under a collective bargaining agreement with any union(s); if so a copy of all current and applicable collective bargaining agreements must also be furnished with the SF 98 notice.
- Item 9.* Print the name and telephone number of the contracting officer submitting the SF 98 so that DOL will know whom to contact for information or response.
- Item 10.* Give a complete, legible address to speed response.

**Exhibit 2 for PH 10.2.10-II, Satisfying the Requirement to Obtain Wage Determinations
SF 98A, Attachment A (continued)**

Instructions For SF 98A, Attachment A

NOTE: If the number of service employees will not exceed five, attach a statement to that effect to SF 98. You do not need to fill out SF 98a.

- Item 11.** Be sure to enter correctly the notice number appearing at Item 1 of the SF 98 you are submitting.
- Item 12.** Enter the classes of service employees to be employed in performing the contract. Simple entries are often sufficient—for example, "janitor," "guard," and the like. If more complex jobs are involved, describe concisely what the employee will do. Job titles and duties in Item 12 must be listed and described accurately so that the Department of Labor can match the job to be performed against existing wage determinations or available wage payment data.
- Item 13.** Enter the number or estimated number of employees to be employed in each class listed in Item 12.
- Item 14.** The amended Service Contract Act requires the contracting agency to include in the contract a statement of the hourly wage rates that would be paid if the listed classes were for Federal employees. Assume each class of employees listed in Item 12 were to be filled by "wage board" or "blue collar" employees of the Postal Service. Enter the hourly Federal or Postal Service wage rate that each listed class would be paid. The local Postal Service personnel or payroll office can provide the appropriate hourly rates.

Exhibit for PH 10.2.10-III, Other Service Contract Act Requirements
SF 99, Notice of Award of Contract

SF 99, Notice of Award of Contract

Standard Form 99 Revised May 1965 DEPARTMENT OF LABOR Wage and Hour and Public Contracts Divisions 99-104		This notice of award is required pursuant to Article 201, 1201 of Regulations Part 201, issued under 41 U.S.C. 35-45	
NOTICE OF AWARD OF CONTRACT			
1. Department or Agency		2. Branch, Bureau, Division, etc.	
3. Address (Street) (City) (State) (ZIP code)		4. Contract No.	
5. Contractor (Name)		6. Invitation for Bids No.	
7. Address (Street) (City) (State) (ZIP code)		8. Manufacturer (check one) Dealer	
9. To be manufactured or supplied by: (other establishments subject to Act)			
(Firm name) (Street) (City) (State) (ZIP code)			
(a)			
(b)			
(c)			
(d)			
10. Commodity description (Indicate also Federal Supply Class No.)			
11. Amount of Contract	12. Date of Award	13. Completion Date	14. Data Form WH-12 and Poster PC-13 notes

Exhibit for PH 10.2.10-III, Other Service Contract Act Requirements
SF 99, Notice of Award of Contract (continued)

Instructions for SF 99

- Item 1.* The entry should be "U.S. Postal Service."
- Item 2.* The Branch, Bureau, Division, Section, or other entity which has awarded the service contract.
- Item 3.* The address of the Postal Service activity which has awarded the service contract.
- Item 4.* The contract or purchase order number.
- Item 5.* The name of the contractor receiving the contract award.
- Item 6.* The invitation for bids or solicitation number.
- Item 7.* The address of the contractor awarded the contract.
- Item 8.* Enter the term "service contract" here.
- Item 9.* Leave this item blank for service contracts.
- Item 10.* Enter a notation of the major category of the services being provided, for example, "custodial", "guards", "maintenance", "food services", etc.
- Item 11.* Enter the amount of the contract in total dollars.
- Item 12.* Enter the date of the contract award.
- Item 13.* Enter expected completion date or end of the term awarded in the contract.
- Item 14.* Enter the date the WH1313 poster (see Procedure 10.2-II, Walsh-Healey Public Contracts Act) was mailed to the contractor. NOTE: the Form 12 and Poster PC-13 referenced in Item 14 are obsolete and have been superseded by the WH1313 poster which has Service Contract Act notice provisions on the reverse side.

Mail the completed SF 99 to:

Administrator
Wage and Hour Division
U.S. Department of Labor
Washington, D.C. 20210-0001

Telephone: (202) 523-7568

10.3 Buy American Policy

10.3.2 Supplies

Implementing the Postal Service's Buy American Policy

The Postal Service's Buy American policy is voluntary, as the Postal Service is not bound by the provisions of the Buy American Act. When evaluating proposals, use the PM and the guidelines provided here. Refer any questions to assigned legal counsel.

Definitions

The following definitions amplify or clarify those found at PM 10.3.2.b.

1. "The United States" means the 50 States, Puerto Rico, the District of Columbia, and U.S. possessions.
2. For an item to be considered "manufactured in the United States," all phases of the manufacturing need to have taken place in the United States.

Example: Components purchased in the United States were shipped to a foreign country for assembly. The unit was sent back to the United States for final assembly, testing, conditioning, and adjusting. The end product was held to have not been produced in the United States because the domestic costs were not more than 50 percent of the total manufacturing cost.

3. To be considered "domestic," components must have been manufactured from articles, materials, or supplies of which more than 50 percent (in cost) were mined, produced, or manufactured in the United States.
4. Any item may be a component or end product or neither, according to the use the Postal Service intends to make of it. A component is something that is *incorporated into* an end product.

Example: In deciding whether the end product—pills manufactured domestically from a chemical obtained from a foreign source—is domestic, the cost of bottling and packaging the pills is not counted.

5. In applying the Buy American policy, it is where the mining, production, or manufacturing is done that counts—not where the offeror is located.

Example: A Honda manufactured in the United States would be considered a domestic end product if the cost of its components mined, produced, or manufactured in the United States exceeded 50 percent of the cost of all its components.

Price Evaluation Guidelines

Refer to the Buy American Certificate of Provision 10-7, which each offeror is required to complete when its proposal is submitted to the Postal Service. All offerors are required to state whether they are offering U.S. or foreign end products. Categorize the offers and proposals as follows:

1. All domestic end products and components—domestic offer or proposal.

2. All foreign components and end products—foreign offer or proposal.
3. Part domestic and part foreign components and end products—must determine whether domestic or foreign.

Next, screen items categorized as foreign in categories 2 and 3 above against the list of excepted articles and materials (see PM 10.3.4). If end products and components are on the list, you may consider the proposal domestic.

For any offer or proposal in category 3, you must determine which is greater—the price of components and end products that are mined, produced, or manufactured in the United States or the price of those that are not. (To do so, you must ask the offeror for the necessary information.)

If you determine that end products and components should be considered foreign, factor the 6 percent differential into the prices offered. You will use this differential *only* for evaluation purposes. You will not add it to the offered price on the contract award document.

The illustration for this procedure, "Application of the 6 Percent Buy American Differential," outlines the evaluation procedure when a foreign proposal is involved.

Illustration for PH 10.3.2, Implementing the Postal Service's Buy American Policy
Application of the 6 Percent Buy American Differential

APPLICATION OF THE 6 PERCENT PRICE DIFFERENTIAL

	<u>Low Domestic Proposal</u>	<u>Low Foreign Proposal</u>
Cost to Destination	\$1010	\$900
Import Duty	<u>0</u>	<u>\$100</u>
Sub-total	\$1010	\$1000
6% Buy American Act Differential	<u> </u>	<u>60</u>
Total	<u>\$1010</u>	<u>\$1060</u>

In this example the domestic proposal is evaluated as lower in price and should receive the contract award if the evaluation and award criteria indicated that the award was to be made solely on price.

10.4 Clean Air and Clean Water Act

10.4.2 Requirements

Identifying Violators

Postal Service contracting and program personnel can find out whether an individual facility is on the EPA list of violators by contacting:

Listing Official (Mail Code 130A)
Office of Enforcement
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460-0001

Telephone: (202) 475-8777

Appendix D

***Procedures for Cleaning
Service Contracting***

CONTENTS

CHAPTER 1	POLICY	D-1
1.1	Purpose	D-1
1.2	Applicability in Relation to the PM and PH	D-1
1.3	Authority	D-1
1.3.1	Request	D-1
1.3.2	Award	D-1
1.3.3	Administration	D-1
1.4	Restrictions	D-1
1.4.1	Authorized Offices	D-1
1.4.2	Single Office	D-2
1.4.3	Workload Limit	D-2
1.4.4	Dollar Ceiling	D-2
1.4.5	Geographic Limits	D-2
1.4.6	Contract Term	D-2
1.4.7	Office Improvements	D-2
1.4.8	Equipment, Supplies, and Storage Space	D-2
1.5	Special Considerations	D-3
1.5.1	Contracts with Postal Employees and Members of Their Immediate Families	D-3
1.5.2	Union Agreements	D-3
1.5.3	Wages of Self-Employed Contractors	D-3
CHAPTER 2	SUBMISSION OF REQUESTS FOR CONTRACTS	D-4
2.1	Required Format	D-4
2.1.1	Form 7381	D-4
2.1.2	Contents	D-4
2.2	Site Description and Performance Schedule	D-4
2.2.1	Site Description	D-4
2.2.2	Performance Schedule	D-5

2.3	Funding	D-5
2.3.1	Price Estimate Preparation	D-5
2.3.2	Funds Availability	D-5
2.4	Contracting Officer's Representative (COR) Recommendation	D-6
2.4.1	Recommendation, Appointment, and Function	D-6
2.4.2	Qualifications and Availability	D-6
2.4.3	Manager as COR	D-6
2.5	Review and Approval	D-6
2.6	Lead Time	D-6
CHAPTER 3 SOURCE SELECTION AND AWARD		D-7
3.1	Review	D-7
3.2	Method of Source Selection	D-7
3.3	Solicitation Preparation	D-7
3.3.1	Assembly	D-7
3.3.2	Contents	D-7
3.4	Other Solicitation Steps	D-8
3.4.1	Wage Determination.	D-8
3.4.2	Notification of Requesting Office	D-8
3.5	Proposal Evaluation.	D-8
3.5.1	Contractor Selection	D-8
3.5.2	Price Evaluation	D-9
3.5.3	Equally Priced Offers	D-9
3.5.4	Contractor Responsibility.	D-9
3.6	Award	D-10
3.6.1	Timing	D-10
3.6.2	Notice of Award	D-10
3.6.3	Notice to Unsuccessful Offerors.	D-11
3.6.4	Distribution	D-11
CHAPTER 4 CONTRACT ADMINISTRATION		D-11
4.1	Appointment of Contracting Officer's Representative (COR).	D-11
4.2	Postaward Conference	D-11

4.3	Inspection and Acceptance	D-12
4.3.1	All Contracts	D-12
4.3.2	Contracts With Self-Employed Contractors	D-12
4.4	Payments	D-13
4.5	Poor Performance	D-14
4.6	Performance Evaluation	D-14
4.6.1	Six-Month Evaluation	D-14
4.6.2	Final Evaluation	D-15
4.7	Contract Modification	D-15
4.8	Termination	D-15
4.9	Disputes	D-15
4.10	Contract Records	D-15
4.10.1	Contents	D-15
4.10.2	Responsibility	D-15
4.10.3	Contract Administration File	D-16
4.11	Contract Renewal	D-16

EXHIBITS

Exhibit A	Form 7381, <i>Requisition for Supplies, Services, and Equipment</i>
Exhibit B	Frequency of Performance Chart
Exhibit C	Sample Solicitation Cover Letter
Exhibit D	Sample Notice to Postal Service Facility
Exhibit E	Sample Notice of Award
Exhibit F	Sample COR Notice of Appointment
Exhibit G	Sample Notice to Unsuccessful Offerors
Exhibit H	Contract Cleaning Performance and Workhours Report
Exhibit G	Form 1264, <i>Certification for Job Cleaner Services</i>
Exhibit H	Contractor Performance Evaluation Format-- Cleaning Services Contract

CHAPTER 1 POLICY

- 1.1 **Purpose.** This appendix provides guidance on contracting for cleaning services.
- 1.2 **Applicability in Relation to the PM and PH.** These procedures are issued in accordance with *Procurement Manual* (PM) 8.6.2. Unless otherwise stated in this appendix, the policies and procedures set forth in the PM and the *Procurement Handbook* (PH) apply to procurements of cleaning services. Where the provisions of this appendix or those of the accompanying Document Generation System (DGS) Module, vary from those of the PM or the PH, this appendix or DGS prevails; no additional authority to deviate from the PM or PH is necessary. [Note: DGS is the automated system used by procurement offices to generate solicitations and contracts. Personnel of other offices who wish to obtain a proforma cleaning services solicitation/contract for use in conjunction with these procedures should contact their servicing procurement office.]
- 1.3 **Authority**
- 1.3.1 **Request.** Before submitting a request for a cleaning services contract, the office manager must determine if the office qualifies for such a contract by referring to the *Administrative Support Manual* (ASM) and the restrictions stated in these procedures. See 1.4.1 below.
- 1.3.2 **Award.** Cleaning services contracts may be awarded by contracting officers who serve the requesting offices and who possess, by virtue of their certificate of appointment or through an appropriate delegation, procurement authority equal to or greater than the price estimated in the request for a contract.
- 1.3.3 **Administration.** Contract administration encompasses inspection and acceptance of services performed, processing of invoices, and record keeping, as well as any necessary contract modification, termination, or dispute resolution activities. The contracting officer is assisted in these tasks by the appointed contracting officer's representative (COR), as described in chapter 4 of this appendix.
- 1.4 **Restrictions**
- 1.4.1 **Authorized Offices.** The ASM states that cleaning services are normally authorized for facilities with 190 or more revenue units when hourly workload limits are met and the work is not presently being performed by field service maintenance employees. Installations that do not qualify for cleaning service contracts as authorized in these procedures may obtain the services through local purchasing authority if less than \$600 will be paid during a calendar

year to any one contractor and if total expenditures during any 12-month period will not exceed local purchasing dollar authority. See the Management Instruction (MI) entitled "Special Custodial Allowances for Post Office." All other cleaning services contracts must be awarded using these procedures.

- 1.4.2 *Single Office.* Generally, a cleaning services contract may serve only one office. Contracting officers may award contracts for multiple offices only when all of the following conditions are met:
- a. Solicitations issued for the individual offices have resulted in no acceptable offers.
 - b. One finance number is used.
 - c. The contract can be administered adequately to protect the Postal Service's interests.
 - d. A separate performance schedule is developed for each facility.
- 1.4.3 *Workload Limit.* In accordance with the current national agreement and the overtime stipulations of the Fair Labor Standards Act (FLSA), the cleaning workload for a single facility must not exceed an average of 24 hours per week. The workload for multiple facilities must not exceed an average of 40 hours per week.
- 1.4.4 *Dollar Ceiling.* There is no dollar ceiling for contracts awarded under these procedures.
- 1.4.5 *Geographic Limits.* Contracts awarded in accordance with these procedures may be limited to contractors that have their main office no more than 50 miles away from the Postal Service facility or facilities to be serviced.
- 1.4.6 *Contract Term.* All cleaning services contracts awarded in accordance with these procedures will be for a two-year term, with options to extend the contract for up to four additional two-year terms for a total term of up to 10 years. (See Clause 2-20, *Option to Extend the Term of the Contract.*) A new Service Contract Act wage determination must be obtained before an option is exercised.
- 1.4.7 *Office Improvements.* Only cleaning services may be obtained under contracts awarded using these procedures. No alteration, repair, or improvement of a Postal Service facility may be accomplished under the contracts.
- 1.4.8 *Equipment, Supplies, and Storage Space.* Under all contracts awarded in accordance with these procedures, the Postal Service must provide the contractor with all necessary cleaning equipment and supplies. Each facility to be cleaned must provide a locked storage area, approved by OSHA standards, in which these materials will be maintained by the contractor.

1.5 Special Considerations

- 1.5.1 *Contracts with Postal Service Employees and Members of Their Immediate Families.* Normally, the Postal Service does not enter into contracts with its employees, members of their immediate families, or firms controlled by employees or immediate family members. However, in the case of cleaning, it may be to the Postal Service's benefit to award contracts to immediate family members of nonsupervisory employees. These personnel may take greater pride in their work than those having no affiliation with the Postal Service. Accordingly, the contracting officer may select for award an immediate family member of a nonsupervisory employee if the contracting officer determines that acceptance of that individual's proposal will be in the Postal Service's best interest. If the Postal Service employee is promoted to a supervisory position, however, the contract with the immediate family member must be terminated within 60 days.
- 1.5.2 *Union Agreements.* To ensure compliance with agreements and understandings with Postal Service unions, all who participate in the award and administration of cleaning services contracts must ensure that no self-employed contractor is permitted to perform more than an average of 24 hours of work per week (40 hours per week at multiple facilities).
- 1.5.3 *Wages of Self-Employed Contractors.* Self-employed contractors (see 1.4.3 above) must be paid no less than the prevailing minimum hourly wage. A self-employed contractor is one who, except for vacations and emergencies, personally works 51 percent or more of the hours worked under the contract.

CHAPTER 2 SUBMISSION OF REQUESTS FOR CONTRACTS

2.1 Required Format

2.1.1 *Form 7381.* Requesting offices must submit their requests for cleaning services contracts on Form 7381, *Requisition for Supplies, Services, and Equipment*. Copies of this form may be obtained from the servicing Area Supply Center. Form 7381 is shown in Exhibit A.

2.1.2 *Contents and Attachments.* In addition to the other information required by Form 7381, each request must include the following elements, on the form itself or as an attachment:

- a. Site description and performance schedule for each facility to be cleaned (see 2.2 below);
- b. A price estimate and certification of funds availability for the services to be provided (see 2.3 below);
- c. A contact person and telephone number for each facility;
- d. A list of prospective offerors;
- e. Recommended contracting officer's representative (see 2.4 below); and
- f. Justification for noncompetitive award, if applicable.

2.2 Site Description and Performance Schedule.

2.2.1 *Site Description.* This description along with the performance schedule and the statement of work/specifications generated by DGS, will be used in informing potential suppliers of the Postal Service's requirements. Its purpose is to provide and describe as accurate, precise, and sufficiently complete description of the facility to be cleaned. The site description must be prepared in conjunction with the servicing maintenance office and must contain the following elements:

- a. Inventory of the facility's interior. The site description must state the total interior square footage of the facility and provide a building inventory. Each building area must be described in terms of its use (lobby, workroom, etc.) and components (square footage, floor type, light fixtures, etc.) Form 4869, *Building Inventory*, found in Handbook MS-47, *Housekeeping--Postal Facilities*, should be used in developing and submitting the inventory.
- b. Inventory of the facility's exterior. If grounds maintenance will be required (see note in c below), the site description must

state total exterior square footage for paved and unpaved areas. Paved areas include sidewalks, parking lots, and the like. Unpaved areas include lawns, hedges, plantings, and so forth.

- c. Unique cleaning requirements, if any. A standardized statement of cleaning requirements is provided by the solicitation package generated by the DGS. (See Optional Clause OB-509, Scope of Work). If the requesting office has requirements or specifications that are unique to its facility it must identify them in an attachment to its site description. (Note: Semiannual and annual work, such as window-washing, may either be included in the statement of work or obtained separately through local purchasing authority. The same is true of grounds maintenance.)

2.2.2 *Performance Schedule.* The performance schedule for each facility must also be prepared in conjunction with the Servicing Maintenance Office and must contain the following elements:

- a. Estimated Hours. The schedule must estimate the number of hours that it will take to clean the facility over a two-week period. (As stated at 1.4.3 above, the estimated hours may not exceed an average of 24 hours per week.) Handbook MS-47, *Housekeeping--Postal Facilities*, may be helpful in computing the estimated hours for most facilities; see Form 4852, *Workload Analysis and Summary*.
- b. Required Days and Hours. The schedule must state the days of the week on which cleaning services are required and a range of hours within which the contractor may perform the work. Cleaning may not be performed on Sundays or Federal holidays. It must be performed during hours when Postal Service employees are on official duty and when it will not interfere with the movement of the mail.
- c. Frequency of Performance. The schedule must include a Frequency of Performance Chart showing how often each task is to be done. The format to be used is shown as Exhibit B; if any area shown in the format is not applicable, the chart should so state. The chart must be based on the site description and the workload analysis/estimated work hours.

2.3 **Funding**

2.3.1 *Price Estimate Preparation.* The requesting office's price estimate should be based on the projected hours of service required and the prevailing wage rates or prevailing minimum wage rates for those services. Rates may be obtained from the procurement office.

2.3.2 *Funds Availability.* The requesting office must ensure that funds are available to cover the estimated price of the work to be performed under the contract's initial two-year term. Funds availability must

be certified on Form 7381 (Exhibit A). Funds availability for an option period must be certified 60 days before the option is to be exercised.

2.4 Contracting Officer's Representative (COR) Recommendation

2.4.1 *Recommendation, Appointment, and Function.* Requesting offices are responsible for recommending an individual to serve as COR. Contracting officers are responsible for the official appointment of the COR. CORs play a major role in contract administration--performing inspection and acceptance responsibilities, verifying workhours, and maintaining records.

2.4.2 *Qualifications and Availability.* The person recommended to serve as COR should be well qualified to perform COR duties and known to be conscientious and trustworthy. Verifying that cleaning services are performed adequately involves making subjective determinations. Therefore, the recommended COR must be known to be reasonable and capable of working well with contract personnel. In addition, a back-up COR should be recommended, since it is essential that contractor performance be monitored each day. Further, as the performance of COR duties may take substantial time from other duties, the recommending official must determine that sufficient time can be made available for the individuals to properly perform COR responsibilities.

2.4.3 *Manager as COR.* The installation head may serve as a COR.

2.5 *Review and Approval.* Before submission to the procurement office, a request for contract must be reviewed and approved by the installation head and the servicing maintenance office. Additional review and approval will be as required by regional directives or other instructions.

2.6 *Lead Time.* An approved request for contract should be submitted to the servicing procurement office at least 60 days before the date when cleaning must begin.

CHAPTER 3 SOURCE SELECTION AND AWARD

- 3.1 Review.** The contracting officer must review the request for contract to ensure that it is complete and that it clearly sets forth the services desired. The request forms the basis on which the procurement office will prepare the solicitation--the document that will inform prospective suppliers of the requirements, tell them how to prepare proposals, and state the terms and conditions that will govern source selection, contract award, and contract performance. Particular care must be taken to avoid ambiguous or inconsistent terminology. Any requested modification of the specifications generated by DGS should be reviewed carefully and coordinated with the requesting office, and its servicing maintenance office.
- 3.2 Method of Source Selection.** All contracts must be awarded through competition when feasible. The contracting officer must attempt to obtain proposals from at least those three suppliers that appear best qualified to satisfy the requesting office's needs. If it is not possible to obtain at least two proposals, the contracting officer must document the file as required by PM and PH 4.3.
- 3.3 Solicitation Preparation**
- 3.3.1 Assembly.** DGS has been designed to generate solicitations and subsequent contracts in full compliance with this. See the DGS User's Manual for instructions in its use.
- 3.3.2 Contents.** In addition to a cover letter prepared using COMPASS (see sample text in Exhibit C), the solicitation must contain the following elements:
- a. *Solicitation: Cleaning Services.* Complete as instructed by DGS.
 - b. *Offer and Award: Cleaning Services.* Complete as instructed by DGS.
 - c. *Section 1--Items and Prices.* Insert the appropriate information for 1.1, Estimated Hours, and 1.2, Required Days and Time, as prompted by DGS.
 - d. *Section 2--Scope of Work/Specifications.* Assemble as instructed by DGS. If any changes or additions to the DGS specifications are needed, see 3.1 above.
 - e. *Section 3--Delivery/Performance Schedule.* Assembled by DGS.
 - f. *Section 4--Specific Contract Clauses.* Following DGS instructions, insert the FLSA minimum wage to be shown in

Optional Clause OB-576, *Contracts with Self-Employed Contractors*. Indicate whether a wage determination (see 3.4.2 below) has been obtained. Add any special provisions needed to convey unique aspects of the particular requirement.

- g. *Section 5--General Contract Clauses*. Assembled by DGS.
- h. *Section 6--List of Attachments*. DGS will automatically list the following: Attachment A, Building Inventory; Attachment B, Frequency of Performance Chart; Attachment C, Contract Cleaning Performance and Workhours Report. If a wage determination has been obtained, list it here as Attachment D.
- i. *Section 7--Solicitation Notices and Proposal Instructions*. Assembled by DGS.
- j. *Section 8--Representations and Certifications*. Assembled by DGS; to be completed by supplier.
- k. *Section 9--Evaluation and Award*. Assembled by DGS.
- l. *Attachments--Insert Attachments A through C (from the requesting office) and Attachment D if available*.
- m. *Table of Contents*. The table of contents is generated by DGS after all the other sections have been assembled. Before you send out the solicitation, insert the table of contents in front of Section 1--Items and Prices.

3.4 Other Solicitation Steps

- 3.4.1 *Wage Determination*. As all contracts awarded in accordance with these procedures are expected to total more than \$2,500 (for the two-year term), Service Contract Act wage and fringe benefit determinations must be obtained. See PM and PH 10.2.10.
- 3.4.2 *Notification of Requesting Office*. The contracting officer must see that the requesting office is both notified of solicitation issuance and advised that any inquiries about the requirement must be directed to the individual indicated in the Solicitation format (item 2d, Contact). Sample text for a notification letter to each facility to be served by the contract is shown in Exhibit D.

3.5 Proposal Evaluation

- 3.5.1 *Contractor Selection*. On receipt of proposals, the contracting officer must analyze them to determine which proposal offers the best overall value to the Postal Service, based on the pricing and responsibility factors discussed below. If this determination is based

on a factor other than low price, the reasons for it must be documented in the contract file.

3.5.2 *Price Evaluation.* The contracting officer must determine whether the prices offered are fair and reasonable. One or more of the following techniques may be used:

- a. Comparison of the offers received with one another.
- b. Comparison of offers with prior or other contract prices.
- c. Comparison of offers with minimum or prevailing wage rates (plus a percentage for profit and overhead).
- d. Comparison of offers with the independent Postal Service estimate.

3.5.3 *Equally Priced Offers.* Equally priced proposals are highly possible as offerors may merely take the hours estimated by the Postal Service and multiply them by the minimum or prevailing wage rates. In such a case, the contracting officer must follow the guidelines in PM 4.2.3.c.

3.5.4 *Contractor Responsibility.* In addition to evaluating proposals for price, the contracting officer must assess capability of providing the services required. The contracting officer must consider such factors as prior work experience, reputation for reliability and thoroughness, and reliability and experience of the offeror's employees. The contracting officer should also evaluate understanding of the contract requirements. These assessments are normally made by interviewing the offerors submitting the most favorable prices and checking the references cited in their proposals.

3.6 Award

3.6.1 *Timing.* Award should be made at the earliest possible date after receipt of proposals.

3.6.2 *Notice of Award.* The successful offeror must be issued a notice of award (see sample text in Exhibit E), along with:

- a. A copy of the contract (the DGS Offer and Award format contained in the successful offeror's proposal, completed and signed by the contracting officer, and sections 1 through 6 from DGS);
- b. The COR notice of appointment (see Exhibit F and the discussion in 4.1 below);
- c. Handbook S-3 (rev.), *Floors--Care and Maintenance*, and the poster *Equal Opportunity Is the Law*, if applicable (see PH 10.2.7).

- 3.6.3 *Notice to Unsuccessful Offerors.* Unsuccessful offerors must be notified told promptly after award that their offers are not being accepted. A sample notice is shown as Exhibit G.
- 3.6.4 *Distribution.* Besides the copies to the contractor (see 3.6.2 above) and the appointed COR (see 4.1 below), the contract must be distributed as follows:
- a. Original in the procurement office's official contract file.
 - b. Copy to the St. Louis Postal Data Center (PDC).

CHAPTER 4 CONTRACT ADMINISTRATION

- 4.1 Appointment of Contracting Officer's Representative (COR).** Simultaneous with contract award, the contracting officer must issue a notice of appointment to the COR and any backup COR to be designated for the contract. The form and content of the COR notice should be as shown in Exhibit E. A copy of the contract should be forwarded to the COR along with the notice. The COR's authority is limited to that specifically granted in the notice.
- 4.2 Postaward Conference.** As soon as possible after contract award, the COR must meet with the contractor to accomplish the following:
- a. Explain the need for quality service. Tell the contractor that deductions will be made from the payments due if the contractor fails to appear and perform work on any scheduled day, and that the contract will be terminated for repeated failure to perform or to perform acceptably.
 - b. Review the contract schedule and emphasize the importance of adherence to it. Ensure that the contractor understands what work is to be performed on what days, as well as the requirement to perform weekly, monthly, and less frequent tasks.
 - c. Explain that a daily work log must be kept. Instruct the contractor to check in with you and sign the log on arrival at the Postal facility, and to again check in with you and sign the log on completion of the day's work. Tell the contractor that you will go over the work and sign the log to confirm satisfactory performance (noting any exceptions).
 - d. Discuss the requirement to submit a completed Contract Cleaning Performance and Workhours Report every other week (see 4.3.1.3 below).
 - e. Show the contractor the supply locker, the supplies, and the equipment to be used. Complete and execute a joint inventory of the materials turned over to the contractor. Give the contractor the locker key.
 - f. Explain any access control procedures or procedures for the protection of personnel and property, with which the contractor must comply.

4.3 Inspection and Acceptance

4.3.1 All Contracts

4.3.1.1 **Monitoring.** The COR must ensure that the contractor checks in at the start of each day, that the contractor's work is reviewed at the end of each day, and that work not performed is noted in the daily work log. The Frequency of Performance chart (Exhibit B) should be used in reviewing performance.

4.3.1.2 **Order of Performance.** The COR should not attempt to schedule the contractor's work. Unless the contract specifies otherwise, the contractor's only constraints are:

- a. To complete the tasks during the hours when Postal Service employees are on duty, as specified in the contract;
- b. To avoid interfering with the movement of mail.

4.3.1.3 **Report Card.** In order to get paid, each contractor must submit a Contract Cleaning Performance and Workhours Report (or facsimile) (see Exhibit H) on the last day of each biweekly period. The COR must verify all entries by signing and submitting the form to the contracting officer. The COR must keep a copy. *Note:* Under no circumstances should the contractor be allowed to use a time clock.

4.3.1.4 **Supplies and Equipment.** The COR must ensure that sufficient supplies and equipment are available; the contractor may not be docked for lost time due to Postal Service failure to supply the supplies and equipment needed. If a Postal Service representative mistakenly requires the contractor to provide supplies or equipment, an equitable adjustment may be made through the contracting officer.

4.3.1.5 **Loitering.** The COR must not allow contractors or their employees to loiter in the installation. Contract personnel must perform their duties and leave the premises upon completion.

4.3.1.6 **Floor Care.** For reasons of public and employee safety, the COR must make sure the contractor follows the floor-care methods in Handbook S-3 (rev), *Floors--Care and Maintenance*.

4.3.2 **Contracts With Self-Employed Contractors.** In the case of a self-employed contractor, however, work hours must be carefully tracked, and hourly compensation computed. The contract states the Postal Service's estimate of the average number of workhours required every two weeks to clean the installation. If a self-employed contractor works more than the estimated hours, it can result in payments that are under the minimum wage when computed on an hourly basis--a violation of the contract (see Optional Clause OB-576 in Section 4--Specific Contract Clauses). Consequently, the COR must monitor the number of hours a self-employed contractor is

working. If the contractor is averaging more than the estimate, the following steps must be taken:

- a. The COR must reevaluate the Postal Service's workhour estimate, in conjunction with the servicing maintenance office, to determine whether it is sufficient.
- b. If the estimated workhours are sufficient:
 - (1) The COR must notify the contracting officer.
 - (2) The contracting officer must notify the contractor in writing that the excessive hours are caused by inefficiency.
 - (3) After receiving notice, the contractor must be given one two-week period to improve. If the contractor continues to exceed the estimate, the COR must notify the contracting officer, who may terminate the contract (see Optional Clause OB-581 in Section 4--Specific Contract Clauses).
- c. If the estimated workhours are insufficient:
 - (1) The COR must prepare a revised estimate if the reevaluated workhours are no more than 30 percent above the original estimate and the extra hours are required because the Postal Service underestimated the time needed. The revised estimate should be forwarded, with certification of additional funding, to the contracting officer. The contracting officer should attempt to reach an agreement with the contractor to modify the contract price. The hourly rate as calculated under the adjusted price must not exceed the hourly rate under the original price. If a satisfactory agreement cannot be reached, the contracting officer must terminate the contract and reprocure the services.
 - (2) The contract must be terminated and the services reprocured, if the revised estimate exceeds the original estimate by more than 30 percent.

4.4

Payments. Unless notified to the contrary, the St. Louis PDC will automatically pay the contractor 1/26 of the total contract price every two weeks. Consequently, if the contractor fails to perform work on any day of the two-week period, the paying office must be notified. Form 1264, *Certification for Job Cleaner Services*, (see Exhibit I) must be used. The PDC will provide this form to the postal facility after contract award and replace it after each use. The instructions below should be followed:

- a. If no services were performed on one or more scheduled days during a biweekly period (for example, if a contractor's schedule

requires cleaning on ten days but the contractor cleans on only eight days), enter the number of days work *was* performed in the "current fiscal year" (CFY) block. Do not make deductions for Federal holidays, however, unless the contract specifically requires holiday service.

- b. If no service at all was performed during a biweekly period, check block 2.
- e. Make sure that all Forms 1264 are signed and dated, and that the installation and pay period are identified in block 3.
- f. Submit the form to the PDC in time to be received by the Monday after the biweekly period ends. Otherwise, the PDC will have already processed a check to the contractor for the full biweekly amount.

(NOTE: Form 1264 should *not* be used to indicate deductions for cleaning that fails to meet contract requirements. Instead, the contracting officer should be notified of the deficiencies. See 4.5 below.)

- 4.5 **Poor Performance.** If the contractor is not performing the work in accordance with the contract requirements, the COR should immediately bring it to the attention of the contractor and should document both the deficiencies and the consultation with the contractor in his or her contract administration file. A copy of the documentation should be sent to the contracting officer. If the contractor fails to respond, the COR should notify the contracting officer in writing, outlining the specific deficiencies. The contracting officer should then notify the contractor in writing, requesting that the problems be resolved within a reasonable time. If they are not resolved, the contracting officer may terminate the contract on notice (see Optional Clause OB-581).

4.6 Performance Evaluation

- 4.6.1 **Six-Month Evaluation.** Every six months, the COR must complete a Contractor Performance Evaluation format (see Exhibit J) for approval by the installation head and submission to the contracting officer, who will review it and keep it in the contract file. The contracting officer or contract administrator must send a copy of the format to the COR at least two weeks before it is due to be completed. The COR must take care in completing the format to ensure that it accurately and fairly represents the contractor's performance under the contract, as the evaluation will be considered by the contracting officer in determining acceptability for future Postal Service work. Specific explanation and documentation must be provided for a Marginal or Unsatisfactory rating.

- 4.6.2 **Final Evaluation.** When the contract term is completed or the services are no longer required, the COR must prepare a final Contractor Performance Evaluation, using the same format as that for the periodic evaluations (Exhibit J) and providing details on any Marginal or Unsatisfactory rating. The final evaluation must be forwarded to the contracting officer for use in closing out or extending the contract.
- 4.7 **Contract Modification.** Only the contracting officer is authorized to modify any term or condition of the contract. If a modification is required, the contracting officer must be provided with all information and documentation needed to justify it.
- 4.8 **Termination.** Either the Postal Service contracting officer or the contractor may terminate the contract with 30 days' notice (see Optional Clause OB-581). If the requesting office determines that service is no longer required or that the service being provided is unacceptable, it must ask the contracting officer to terminate the contract. On occasion, continued performance of the contract may create an undue hardship on a self-employed contractor (for example, a family move, an opportunity to obtain a better position, or similar mitigating circumstances). In these situations, the COR should obtain all information possible and, if warranted, recommend to the contracting officer that it is in the Postal Service's interest to terminate the contract. It is not in the Postal Service's interest to force contractors to perform when performance will not be reasonably rewarding to them.
- 4.9 **Disputes.** If the CORs and the contractor are unable to resolve any disagreement that occurs, the matter must be referred to the contracting officer for resolution in accordance with PM and PH 6.7.3. Disputes should be resolved as early as possible; however, CORs and all other Postal Service employees are cautioned not to exceed their authority in attempting to reach an agreement.
- 4.10 **Contract Records**
- 4.10.1 **Responsibility.** Throughout the life of the contract, record keeping is the joint responsibility of the COR and the contracting officer. At the end of the contract, all COR records must be forwarded to the contracting officer.
- 4.10.2 **Official Contract File.** This file is maintained by the contracting officer. Its contents must include:
- a. The original contract document and any contract modifications;
 - b. Wage determinations applicable to the contract;

- c. Contractor Performance Evaluations submitted by the COR; and
- d. Documentation and correspondence relating to any performance problems.

4.10.3 **Contract Administration File.** This file is maintained by the COR. Its contents must include:

- a. A copy of the contract and any modifications;
- b. A copy of the contracting officer's notice of appointment;
- c. A copy of all Contract Cleaning Performance and Workhours Reports;
- d. All correspondence to and from the contractor; and
- e. Memoranda of reviews, audits, phone calls, and other meetings or conversations having a bearing on contract performance.

4.11 **Contract Renewal.** If the COR and the manager of the requesting office conclude that the contractor has provided satisfactory services and that there is a continuing need for them, the COR should forward a request for contract extension to the contracting officer at least 90 days before the current contract period ends.

Exhibit A
Form 7381, Requisition for Supplies, Services, and Equipment

U.S. Postal Service REQUISITION FOR SUPPLIES, SERVICES, OR EQUIPMENT See Instructions on Reverse		1. Requisition No.		2. Request Date		3. Required Delivery Date		Page No.		
		4. Job Order Number (Maintenance Use Only)								No. of Pages
		WC	Acronym	Equipment No.	EC	Work Order No.				
5. To:		6. From: (Facility Name, Address, and ZIP + 4)								
7. Complete Delivery Address		8. For Information Call								
		a. Name		b. PEN Telephone No.						
9. Budget Finance No.	10. Prop. Acct. Fin. No.	11. Acct. No.	12. FEDSTRIP Address Code	13. CAG	14. PCN	15. Requestor ☐ VMF ☐ Other		16. ID No.		
17. Description										
PS Item No., NSN, or Part No. (a)	Supplies, Services, or Equipment Requested (b)			Quantity (c)	Unit (d)	Unit Price (e)	Estimated Cost (f)			
18. Justification										
19. Suggested Source of Supply										
20. Requesting and Approval Signatures										
a. Requested By		b. Approved By		c. Certifying Funds Available						
				Amount		Signature				
d. Sectional Center Approval		e. Division Approval		f. Other Approval						
Procurement Use Only	21. Source of Supply			22. Contract/Order No.						
	23. Notes			24. Order Date						
	25. Processed By (Title and Signature)									

PS Form 7381, August 1986

Exhibit B
Frequency of Performance Chart

PART I-TASKS PERFORMED MORE THAN ONCE A WEEK

<u>Area of Performance</u>	<u>Task</u>	<u>Day of Performance</u>					
		Sat.	Mon.	Tue.	Wed.	Thu.	Fri.
Workroom Toilets	Clean Police	___ ___	___ ___	___ ___	___ ___	___ ___	___ ___
Office Toilets	Clean Police	___ ___	___ ___	___ ___	___ ___	___ ___	___ ___
Lunch/Break Rooms	Clean Police	___ ___	___ ___	___ ___	___ ___	___ ___	___ ___
Locker Rooms	Clean Police	___ ___	___ ___	___ ___	___ ___	___ ___	___ ___
Workrooms	Clean Police	___ ___	___ ___	___ ___	___ ___	___ ___	___ ___
Office Spaces	Clean	___	___	___	___	___	___
Supply Rooms, etc.	Clean	___	___	___	___	___	___
Lobbies and Corridors	Clean Police	___ ___	___ ___	___ ___	___ ___	___ ___	___ ___
Exterior Areas	Police	___	___	___	___	___	___
Stairways	Clean Police	___ ___	___ ___	___ ___	___ ___	___ ___	___ ___
Freight Elevators	Clean	___	___	___	___	___	___
Passenger Elevators	Clean	___	___	___	___	___	___
Platforms	Clean Police	___ ___	___ ___	___ ___	___ ___	___ ___	___ ___
Lawns	Mow Water Edge	___ ___ ___	___ ___ ___	___ ___ ___	___ ___ ___	___ ___ ___	___ ___ ___

PART II—TASKS PERFORMED WEEKLY, MONTHLY, OR LESS FREQUENTLY

Area of Performance	Task	Perform Weekly	Performance During Each Month Checked Below											
			J	F	M	A	M	J	J	A	S	O	N	D
Light Fixtures	Dust	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
	Wash	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Venetian Blinds	Dust	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
	Wash	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Lobby Glass	Wash	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Exterior Glass	Wash	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Interior Glass	Wash	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Pipes/Ducts	Dust	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Lookout Gallery	Clean	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Carrier Cases	Clean	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
PO Boxes	Dust	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
	Wipe	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Floor Maintenance														
Resilient	INT	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
	PERI	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Nonresilient Except Concrete	INT	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
	PERI	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Concrete	INT	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
	PERI	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
Wood/Cork	INT	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
	PERI	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	

INT = Initial Preparation
PERI = Periodic Maintenance

See also the specifications in Section 2 of the contract.

Exhibit C
Sample Solicitation Cover Letter

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

[Date]

Mr. John Brown
Meadowview Cleaning Company
2300 Main Street
Midtown, NJ 03204

Re: Cleaning Service Contract for the Midtown Postal Service Facility

Dear Mr. Brown:

The Postmaster at the _____ U.S. Post Office has indicated that you may be interested in providing cleaning services for that facility. Attached to this letter is a solicitation for proposals to perform such services. It describes the work to be performed, states the terms and conditions that will apply to any agreement that is awarded, and provides instructions on preparing and submitting proposals.

Please review the solicitation. If you have any questions, please call _____ at _____. Do not rely on any information that you may obtain from anyone other than that person.

Please note that you must visit the Postal Service facility, before preparing your proposal, to find out about the nature and location of the work and the conditions that may affect the cost of the work. To arrange a visit, please contact _____ at _____.

If you are interested in providing the required services, please complete the following:

- a. Solicitation format. Complete blocks 6 and 7, as appropriate, and the signature blanks in block 8.
- b. Offer and Award format. Complete block 9, Offeror/Contractor, and block 12, Annual Amount (your proposed price) and the contractor signature blanks in block 15.
- c. Section 8--Representations and Certifications. Complete.

Return one copy of each these documents in accordance with the instructions in item 5 of the Solicitation format (front page). If any amendments are issued to this solicitation, be sure you comply with the requirements of Provision A-5 in Section 7 of the solicitation. Please note that failure to follow the preceding instructions could result in the rejection of your proposal.

If you are not interested in providing these services, please let us know by writing a short letter or marking this letter "not interested" and returning it.

If you submit a proposal, you can expect to be contacted within approximately 30 days and advised as to whether your proposal is being considered for award.

Thank you for your cooperation.

Sincerely,

Jim W. Vandenberg
Contracting Officer

Exhibit D
Sample Notice to Postal Service Facility

UNITED STATES POSTAL SERVICE

Washington, DC 20260

Date:

Our Ref:

Subject: Enclosed Solicitation for Cleaning Services

To: Postmaster, Sunnydale Post Office

Please post a copy of the enclosed solicitation on your lobby board or some other conspicuous place.

If you distribute any solicitations, please make a note of the names and addresses of the recipients and forward them to this office. That will enable us to send the recipients any solicitation amendment that may become necessary.

Any prospective offeror who desires an explanation or interpretation of the solicitation should be told to contact the contracting officer at [phone number] .

Please advise prospective offerors that their proposals should not be submitted to your office but instead should be mailed directly to the address shown in the solicitation.

Your cooperation is appreciated.

Jim W. Vandenberg
Contracting Officer

Enclosure

Exhibit E
Sample Notice of Award

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260
[Date]

Mr. John Brown
Meadowview Cleaning Company
2300 Main Street
Midtown, NJ 03204

Dear Mr. Brown:

We are pleased to inform you that your offer dated _____
to provide _____ cleaning services for the _____ Post
Office has been accepted. A copy of Contract No. _____
is attached.

Cleaning must be performed on the days and during the times stated in
Section--Items and Prices of the contract, beginning on the Start Date shown
in block 10 of the Offer and Award format. All instructions contained in
Section 2--Scope of Work/Specifications must be followed.

(Name and Title) _____ has been appointed as
the contracting officer's representative (COR) for this contract. Attached are
two copies of the notice of appointment. Please read the notice, sign one
copy and return it to this office, and keep the other copy for your contract
file.

The COR will contact you to set up a meeting in which you will be furnished
supplies and equipment, and briefed on contract requirements and operating
procedures.

In the meantime, if you have any questions, please contact _____,
Contract Administrator, at (____) _____.

Sincerely,

Jim W. Vandenberg
Contracting Officer

Exhibit F
Sample COR Notice of Appointment

UNITED STATES POSTAL SERVICE

Washington, DC 20260

Date:

Our Ref: PH Appendix D, Cleaning Services Contracts

Subject: Appointment as COR for Cleaning Services Contract

To: Postmaster, Sunnydale Post Office

You are hereby appointed as COR for the enclosed contract. As a COR, you are authorized and directed to perform the duties and responsibilities described in PH Appendix D (referenced above) and summarized below:

- a. Conducting a postaward conference to clarify contract requirements and operating procedures.
- b. Seeing that the contractor is provided with adequate Postal Service-furnished supplies and equipment.
- c. Ensuring that the contractor is not directed or authorized to perform work outside the contract's scope.
- d. Monitoring and inspecting the work to ensure that all work specified in the contract is performed and performed acceptably, noting any deficiencies in the contract administration file, and notifying the contracting officer in writing of unsatisfactory service.
- e. Seeing that the contractor logs in and out each day.
- f. Seeing that the contractor fills out a Contract Cleaning Performance and Workhours Report each biweekly period, and verifying the hours worked.
- g. Promptly informing the PDC if deductions are to be made from the contractor's payments due to lack of performance on one or more days per biweekly performance period.
- h. Completing a Contractor Performance Evaluation format every six months and forwarding the format to the contracting officer along with associated documentation.

- i. Maintaining a contract administration file containing a copy of the contract, copies of daily work logs, copies of Contract Cleaning Performance and Workhours Reports, copies of all correspondence (both to and from the Postal Service), performance evaluations, and other documents pertinent to the contract.
- j. Monitoring payments to the contractor to ensure that the contractor is paid properly.
- k. Upon completion of all work under the contract:
 - (1) Ensuring that all required services have been received by the Postal Service, and that all payments due the contractor have been made.
 - (2) Ensuring that a final Contractor Performance Evaluation format is prepared.
 - (3) Forwarding a copy of all documents relating to the contract to the contracting officer by memorandum, stating that all the duties set forth above have been fulfilled, the contract work has been satisfactorily completed, and final payment has been made.

Please note that you may not redelegate any of the authority listed above, except for clerical tasks associated with that authority.

Also, be aware that under no circumstances may you make changes that would affect the duration of the contract or the contract price. Please contact me if there is a need for changes that would affect the overall time of performance or the price.

If you require any assistance in performing these duties and responsibilities, or in resolving any contractual problems that arise, please contact the contracting office.

I am providing you with two copies of this letter of designation. Please sign one copy in the space provided below to indicate your acceptance, and return that copy to me. In addition, please sign the following certification to indicate that you have read and will abide by the Postal Service's Code of Ethical Conduct (copy attached).

Jim W. Vandenberg
Contracting Officer

Enclosures

ACCEPTED: _____

DATE: _____

I have read the Code of Ethical Conduct for Postal Service Employees and will abide by its requirements in conducting all my responsibilities as contracting officer's representative.

CERTIFIED: _____

DATE: _____

Exhibit G
Sample Notice to Unsuccessful Offerors

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260
[Date]

Mr. John Brown
Meadowview Cleaning Company
2300 Main Street
Midtown, NJ 03204

Dear Mr. Brown:

You recently submitted an offer in response to Solicitation No. _____,
issued on _____, for _____ cleaning services
required by the _____ Post Office.

Award was made to _____ on _____.

The Postal Service appreciates your efforts in response to our solicitation. We
will keep your name on our solicitation mailing list.

Sincerely,

Jim W. Vandenberg
Contracting Officer

Exhibit H
Contract Cleaning Performance and Workhours Report

CONTRACT CLEANING PERFORMANCE AND WORKHOURS REPORT

Contract No. ____ - ____ - ____ - ____

Contractor's Name _____

Postal Service Facility _____

Contractor's T.I.N. ____ - ____ - ____

Location _____

Report for the two-week period ending _____, 19 ____

Record of actual hours worked during this two-week period:

	Sat	Sun	Mon	Tues	Weds	Thurs	Fri	Total
Week 1								
Week 2								

Total actual hours worked during the two-week period _____

Contractor's Signature
Date _____

COR's Signature
Date _____

The contractor hereby certifies that the hours shown were in accordance with the contract terms and conditions and were required to perform services specified for this reporting period.

Exhibit I
Form 1264, Certification for Job Cleaner Services

15 1542 FINANCE NUMBER	CONTRACTOR	40345 CONTRACT NO	490 NORMAL AMOUNT	17 NORMAL DAYS
---------------------------	------------	----------------------	----------------------	-------------------

CERTIFICATION FOR JOB CLEANER SERVICES

INSTRUCTIONS. SUBMIT CARD ONLY IF:
 ITEM 1. If no service was performed during part of period, state number of days on which service was performed.
 Code current and prior fiscal year separately.
 Check item 2 if no service was performed during entire period.
 Always complete items 3 and 4.

RETURN TO:

Postal Data Center
 Contractual Services Branch
 Contract Job Cleaners
 P. O. Box 14678
 St. Louis, Mo. 63180-9181

PS FORM 1264
 DEC 1971
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80

1700001015

ANNUAL RATE CONTRACT CLEANERS

1. NUMBER OF DAYS SERVICE IS PERFORMED
 IF DIFFERENT FROM CONTRACT

CFY
☒

PFY
☐

2. ☐ CHECK HERE IF NO SERVICE PERFORMED DURING PERIOD

3. POST OFFICE AND STATION	PAY PERIOD
X	X
4. SIGNATURE OF POSTMASTER OR AUTHORIZED OFFICIAL	DATE
X	X

Exhibit J
Contractor Performance Evaluation Format—Cleaning Services Contract

**Contractor Performance Evaluation—
Cleaning Service Contract**

1. Contract No. _____ 2. \$ (Annual Amount) _____
3. Postal Installation _____
4. Contract Term _____ to _____
5. Name and address of contractor:
- _____
- _____

5. Contractor Performance (Check appropriate space):

	Always	Usually	Seldom	Never
a. Were services performed as scheduled?	_____	_____	_____	_____
b. Were services adequately performed?	_____	_____	_____	_____
c. Was rework necessary?	_____	_____	_____	_____
d. Did contractor check in and out with COR?	_____	_____	_____	_____
e. Did contractor perform within estimated time?	_____	_____	_____	_____

6. Overall Rating: () Superior () Satisfactory
() Marginal () Unsatisfactory

7. Comments (attach a separate sheet and back-up documentation as needed to explain a Marginal or Unsatisfactory rating):
- _____
- _____

Prepared by:

Reviewed by:

Approved by: